

No. 16-35589

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ALLIANCE FOR THE WILD ROCKIES, Plaintiff-Appellant

v.

CHRISTOPHER SAVAGE, et al., Defendants-Appellees, and

LINCOLN COUNTY, et al., Intervenor-Defendants-Appellees

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

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MOTION FOR ATTORNEY FEES & OTHER EXPENSES UNDER THE  
ENDANGERED SPECIES ACT & EQUAL ACCESS TO JUSTICE ACT

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## **I. INTRODUCTION**

Appellant Alliance for the Wild Rockies (Alliance) respectfully files this motion for attorneys' fees and other expenses under the Endangered Species Act (ESA) and/or Equal Access to Justice Act (EAJA) fee provision. 28 U.S.C. § 2412(d); 16 U.S.C. § 1540(g)(4). Appellees have been contacted regarding this motion and have not yet expressed their position on the motion. Concurrent with the filing of this motion, Alliance also files a motion to transfer consideration of attorney fees to the district court, as permitted pursuant to Ninth Circuit Rule 39-1.8.

This Court entered judgment on July 26, 2018. The deadline to file a petition for rehearing expired on September 10, 2018. FRAP 40 (a)(1)(B) (45 days to file a petition for rehearing in a civil case if one of the parties is a federal agency). This attorney fee request is timely filed within 14 days of the expiration of the deadline for a petition for rehearing, as required by FRAP 39-1.6(a).

As discussed below, Alliance's request for attorneys' fees under the ESA and EAJA is reasonable because an award is appropriate under the ESA, and/or Appellants are eligible and prevailing parties under EAJA, Defendants' position was not substantially justified, and no special circumstances make an award unjust. Under either statute, the requested rates are reasonable and the requested hours are reasonable.

## II. ARGUMENT

Alliance moves for costs including attorney fees pursuant to the ESA, which authorizes an award of a plaintiff's litigation costs, including attorneys' fees, if the court determines such an award is "appropriate." 16 U.S.C. § 1540(g)(4).

Alternatively, or in addition, Alliance moves for fees and other expenses under EAJA, which authorizes an award of attorneys' fees and other expenses for a "prevailing party." 28 U.S.C. § 2412 (d)(1).

### A. Alliance qualifies for an award of attorneys' fees under the ESA.

The ESA authorizes the "award [of] costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate." 16 U.S.C. § 1540(g)(4). The term "whenever . . . appropriate" requires "some degree of success on the merits," though it is a lesser standard than "prevailing party." *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 694 (1983) (addressing the same term in a different statute). As the Supreme Court explained in *Ruckelshaus*: "By using the term "appropriate" instead of "prevailing party," the language "was meant to *expand* the class of parties eligible for fee awards . . . ." *Id.* at 688 (emphasis added).

In this case, as discussed below, Alliance qualifies as a "prevailing party" with respect to its ESA claim. Therefore, because the ESA's "whenever appropriate" standard is a *lesser* standard than the "prevailing party" standard,

attorney fees are appropriate in this case. *Ruckelshaus*, 463 U.S. at 688. This Court holds that “when a plaintiff wins a preliminary injunction and the case is rendered moot before final judgment, either by the passage of time or other circumstances beyond the parties’ control, the plaintiff is a prevailing party eligible for a fee award. . . . In those cases, although the plaintiff never secured a final judgment granting permanent injunctive relief, the preliminary injunction ended up affording all the relief that proved necessary.” *Higher Taste, Inc. v. City of Tacoma*, 717 F.3d 712, 715–19 (9th Cir. 2013). Likewise, in *Watson v. Riverside*, this Court found that a plaintiff that received a preliminary injunction, and subsequently lost on all claims except one claim that was rendered moot, was still a prevailing party entitled to attorney fees. *Watson v. Cty. of Riverside*, 300 F.3d 1092, 1094-96 (9th Cir. 2002).

In this case, this Court issued a preliminary injunction pending appeal on September 13, 2016, based upon Alliance’s ESA claim. Docket Entry No. 17. Subsequently, Appellees filed a motion to modify the injunction, in part to allow timber harvest, and on November 28, 2016 this Court denied the request to allow timber harvest to occur. Docket Entry No. 30. After oral argument, Appellees moved to dismiss Alliance’s ESA claim as moot because the Appellees had completed ESA consultation. Docket Entry No. 91. Alliance did not oppose this motion to dismiss the ESA claim as moot, but it added a request that the district

court's opinion on this claim be vacated. Docket Entry No. 92. In its July 26, 2018 Opinion, this Court found that the ESA claim was moot and vacated the district court's opinion regarding this claim, as well as vacating the preliminary injunction pending appeal issued for this claim. Docket Entry No. 99-1. Thus, Alliance obtained preliminary injunctive relief for its ESA claim in this case; and that preliminary injunctive relief remained in place until the Court found the ESA claim to be moot. Therefore, as in *Higher Taste*, in this case “plaintiff [won] a preliminary injunction and the [claim] [was] rendered moot before final judgment . . . .” 717 F.3d at 715-19. Accordingly, Alliance is a prevailing party on its ESA claim. *See id.*; *see also Watson*, 300 F.3d at 1094-96.

Because the “whenever appropriate” standard for fees under the ESA is a *lesser* standard than the “prevailing party” standard, *Ruckelshaus*, 463 U.S. at 688, by satisfying the “prevailing party” standard in this case, Alliance also satisfies the ESA’s “whenever appropriate” standard and fees should be awarded in this case. 16 U.S.C. § 1540(g)(4).

**B. Alternatively or in addition, Alliance is entitled to an award of attorneys’ fees under EAJA.**

EAJA provides that a court shall award attorneys’ fees to an eligible “prevailing party” in a civil action brought against the United States “unless the court finds that the position of the United States was substantially justified or that

special circumstances make the award unjust.” 28 U.S.C. § 2412(d)(1). Eligible parties under EAJA include 501(c)(3) tax exempt organizations, such as Alliance, with fewer than 500 employees at the time the action was filed. 28 U.S.C. § 2412(d)(2)(B). Declaration of Michael Garrity ¶2 (September 20, 2018). “Once a party’s eligibility has been proven, an award of fees under EAJA is *mandatory* unless the government’s position is substantially justified or special circumstances exist that make an award unjust.” *Love v. Reilly*, 924 F.2d 1492, 1495 (9th Cir. 1991)(emphasis added).

“EAJA creates a presumption that fees will be awarded unless the government’s position was substantially justified.” *Thomas v. Peterson*, 841 F.2d 332, 335 (9th Cir. 1988). “For its action to be substantially justified, the government must make a ‘strong showing’ that its position was substantially justified.” *Natural Resources Defense Council v. EPA*, 703 F.2d 700, 712 (3rd Cir. 1983))(citation omitted). “If the government’s position violates the Constitution, a statute, or its own regulations, a finding that the government was substantially justified would be an abuse of discretion.” *Meinhold v. U.S. Dep’t of Defense*, 123 F.3d 1275, 1278 (9th Cir. 1997).

**1. Alliance is a prevailing party regarding both claims on appeal - its ESA claim and its NFMA claim.**

As discussed above, Alliance is the prevailing party on its ESA claim. *Higher Taste*, 717 F.3d at 715–19; *Watson*, 300 F.3d at 1094-96. Additionally, with regard

to its NFMA claim, Alliance is also the prevailing party because this Court ruled in favor of Alliance on this claim and reversed the district court, thereby issuing an enforceable judgment on the merits. The Supreme Court holds that “enforceable judgments on the merits . . . create the ‘material alteration of the legal relationship of the parties’ necessary to permit an award of attorney's fees.” *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep't of Health & Human Res.*, 532 U.S. 598, 604 (2001). As this Court has held: “Plaintiff is indisputably a ‘prevailing party,’ because he has secured an ‘enforceable judgment[ ] on the merits.’” *Vogel v. Harbor Plaza Ctr., LLC*, 893 F.3d 1152, 1158 (9th Cir. 2018)(quoting *Buckhannon*, 532 U.S. at 603–04).

Moreover, the fact that this Court reversed and remanded for further proceedings consistent with its Opinion, but did not itself explicitly vacate the underlying agency decision, does not strip away Alliance’s prevailing party status:

The Wood plaintiffs present the classic hallmarks of a prevailing party. They alleged that the government acted improperly in not following prescribed administrative review; the district court agreed and ordered the agency to conform its behavior to the law; and the Secretary complied. Nevertheless, the government points to two factors that it contends alter the prevailing party analysis: (1) the Wood plaintiffs obtained procedural relief, but not the substantive relief they sought; and (2) the district court remanded to the agency without vacatur, while retaining jurisdiction. We disagree with the government's claim that this “procedural posture made all the difference.” Because the posture of this case did not fundamentally affect the prevailing party inquiry set out in *Buckhannon*, we conclude that the district court erred as a matter of law in holding that the Wood plaintiffs were not a prevailing party.

*Wood v. Burwell*, 837 F.3d 969, 973–74 (9th Cir. 2016).

In *Wood*, this Court focused on the fact that the plaintiffs “left the courthouse with an order that the Secretary violated the APA and had to undertake a ‘do over’ of her administrative review—a victory that can hardly be described as leaving ‘emptyhanded.’” *Id.* at 974–75. This Court succinctly stated that the *Wood* plaintiffs obtained “a judicially-sanctioned material alteration in the parties’ relationship because ‘the defendants were required to do something directly benefitting the plaintiff[ ] that they otherwise would not have had to do.’ ” *Id.* at 974 (alteration in original)(citation omitted).

In this case, as in *Wood*, Alliance “alleged that the government acted improperly in not following [the law]; [this Court] agreed and ordered the agency to conform its behavior to the law; and the [agency must comply if it wishes to move forward with the challenged action.]” *Id.* at 973-974. Thus, Alliance obtained “a judicially-sanctioned material alteration in the parties’ relationship because ‘the defendants were required to do something directly benefitting the plaintiff[ ] that they otherwise would not have had to do.’ ” *Id.* at 974.

The parties in this case never briefed the issue of vacatur of the agency’s underlying decision before this Court, which logically explains why the Opinion does not make a ruling on vacatur one way or the other. Instead, on remand, the

district court has filed a scheduling order for briefing on a motion to vacate the underlying project decision, and the parties therefore will fully present their legal arguments for and against that requested remedy in front of the district court in the first instance this Fall. *See e.g. All. for the Wild Rockies v. USFS*, 899 F.3d 970, 987 (9th Cir. 2018)(citation omitted) (holding that “[i]f the Forest Plan's standard . . . is not being met, then the timber sales that depend upon it to comply with the Forest Act are not in accordance with law and must be set aside” and vacating underlying Forest Service decision<sup>1</sup>).

Under *Wood*, however, regardless of whether the district court ultimately vacates the underlying decision in this case, Alliance has obtained prevailing party status because the Court’s Opinion requires the Forest Service “to do something directly benefitting the [Alliance] that they otherwise would not have had to do.” 837 F.3d at 974.

## **2. The government’s position was not substantially justified.**

In this case, the government has not met its burden to make a “strong showing” that all of its conduct was substantially justified. *EPA*, 703 F.2d at 712. To the contrary, in this case, the Forest Service failed to demonstrate compliance with the plain, unambiguous language of its own Forest Plan - although the Forest

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<sup>1</sup>In that case, the parties expressly briefed the issue of vacatur before this Court and therefore this Court addressed it directly in its Opinion. *See* 9th Cir. No. 16-35829, Dkt Entry 36 at pages 24-30.

Plan explicitly forbids an increase in roads above the 2009 Tobacco BORZ baseline, the agency never bothered to calculate or disclose the number of roads in the Tobacco BORZ for the existing condition or the post-Project condition. An agency decision that violates its own regulations, or in this case - its own Forest Plan - is not substantially justified. *See e.g. Mendenhall v. Nat'l Transp. Safety Bd.*, 92 F.3d 871, 874 (9th Cir. 1996)(“A finding that an agency's position was substantially justified when the agency's position was based on violations of the Constitution, federal statute or the agency's own regulations, constitutes an abuse of discretion.”)

The agency also bears the burden of proving any special circumstances that would make an award unjust. *Love*, 924 F.2d at 1495. Here, Alliance is unaware of any special circumstances that would make an award unjust.

### **C. Alliance’s requested rates are reasonable.**

EAJA provides that a court shall award “reasonable attorney fees” to prevailing parties. 28 U.S.C. § 2412(d)(2)(A). An EAJA application should include “the amount sought, including an itemized statement from any attorney . . . representing or appearing on behalf of the party stating the actual time expended and the rate at which fees . . . were computed.” 28 U.S.C. § 2412(d)(1)(B). “The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate,” which is also referred to as the “lodestar.” *Hensley v. Eckerhart*, 461 U.S. 424, 433

(1983). Similarly, “[t]here is no statutory cap on fees under the ESA. Instead, fees are calculated according to the lodestar.” *S. Yuba River Citizens League v NMFS*, 2012 WL 1038131 at \*2 (E.D. Cal. 2012).

Alliance has calculated this “lodestar” amount. *See City of Burlington v. Dague*, 505 U.S. 557, 559-60 (1992). There is a “strong presumption” that the “lodestar” amount represents a “reasonable fee.” *Id.* at 561. This is especially true in cases involving the vindication of the public interest, such as this case. *City of Riverside v. Rivera*, 477 U.S. 561, 572 (1985).

For ESA fee petitions, “[t]he court must look to the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience and reputation; it may not refer to the rates actually charged to the prevailing party. . . Rates should be established by reference to the fees that private attorneys of an ability and reputation comparable to that of prevailing counsel charge their paying clients for legal work of similar complexity.” *Natural Resources Defense Council v. Babbitt*, 1994 WL 361811 \*7-8 (N.D. Cal. 1994); *see also S. Yuba*, 2012 WL 1038131 at \*6.

The Appellate Commissioner and District of Montana have previously determined Smith’s and Bechtold’s rates. *Hapner v. Tidwell*, 9th Cir. No. 09-35896, Docket Entry 60 (May 22, 2012)(order of Ninth Circuit Appellate Commissioner on fees - establishing 2010 appellate rates); *Alliance for Wild*

*Rockies v. Krueger*, 2014 WL 46498 \*5 (D. Mont. 2014)(establishing 2013 district court rates). Subsequently, the Appellate Commissioner has held that it is appropriate for attorneys to increase their rates by \$25 per hour on an annual basis: the Appellate Commissioner noted that “the Northern District of California has awarded \$450 per hour for 2008 to 2009 work by Loarie” and held that the “hourly rates of \$550 for Loarie . . . for the 2013 to 2015 work on the merits” was reasonable” because “Loarie’s \$450 hourly rate . . . reasonably ha[s] increased in the past eight years.” *Pollinator Stewardship Council v. U.S. Env’tl. Prot. Agency*, 2017 WL 3096105, at \*6 (9th Cir. 2017). Accordingly, if the attorney’s rate was \$450 per hour in 2009 and reasonably increased to \$550 per hour in 2013, that equates to a reasonable increase of \$100 per hour over four years, i.e. a reasonable annual increase of \$25 per hour. *See id.*

Thus, as established in prior orders, Ms. Smith’s hourly rate in the District of Montana in 2013 was \$230 per hour. *Krueger*, 2014 WL 46498, at \*5. Under *Pollinator Stewardship Council*, an annual increase of \$25 per hour is reasonable. 2017 WL 3096105, at \*6. Ms. Smith’s hourly rate was thus \$255 per hour in 2014, \$280 per hour in 2015, \$305 per hour in 2016, \$330 per hour in 2017, and \$355 per hour in 2018. Declaration of Rebecca K. Smith ¶8 (September 21, 2018). Two experienced practitioners in the District of Montana agree that this is a reasonable district court rate for Ms. Smith. Declaration of Matthew Bishop ¶19 (September

18, 2018); Declaration of Dana Johnson ¶13 (September 10, 2018).

Regarding appellate rates, Ms. Smith's hourly rate in the Ninth Circuit/Seattle forum in 2010 was set by the Appellate Commissioner at \$225 per hour. *Hapner v. Tidwell*, 9th Cir. 09-35896, Order of Appellate Commissioner, Docket Entry 60 (May 22, 2012). In line with this Order, and a reasonable \$25 annual increase under *Pollinator Stewardship Council*, Ms. Smith's appellate rate in 2011 was \$250, in 2012 was \$275, in 2013 was \$300, in 2014 was \$325, in 2015 was \$350, in 2016 was \$375, in 2017 was \$400, and in 2018 was \$425. R.K. Smith Declaration ¶8. Two experienced environmental plaintiff's attorneys in the Seattle forum agree that these rates are within the prevailing market rates. Declaration of Richard A. Smith ¶15 (September 17, 2018); Declaration of Paul Kampmeier ¶¶ 13-14 (September 17, 2018).

Additionally, as established in prior orders, Mr. Bechtold's hourly rate in the District of Montana in 2013 was \$290.00/hour. *Krueger*, 2014 WL 46498, at \*5. Under *Pollinator Stewardship Council*, an annual increase of \$25 per hour is reasonable. 2017 WL 3096105, at \*6. Thus, Mr. Bechtold's reasonable hourly rate was \$315 per hour in 2014, \$340 per hour in 2015, \$365 per hour in 2016, and \$390 per hour in 2017, and \$415 in 2018. Declaration of Timothy Bechtold ¶11 (September 20, 2018). Two experienced practitioners in the District of Montana agree that this is a reasonable district court rate for Mr. Bechtold. Bishop

Declaration ¶¶19; Johnson Declaration ¶¶13.

Regarding appellate rates, Mr. Bechtold's hourly rate in the Ninth Circuit/Seattle forum in 2010 was set by the Appellate Commissioner at \$350 per hour. *Hapner v. Tidwell*, 9th Cir. 09-35896, Order of Appellate Commissioner, Docket Entry 60 (May 22, 2012). Thus, with an annual increase of \$25 per hour under *Pollinator Stewardship Council*, Mr. Bechtold's reasonable hourly appellate rate was \$500 per hour in 2016, \$525 per hour in 2017, and \$550 in 2018. Bechtold Declaration ¶¶12. Two experienced environmental plaintiff's attorneys in the Seattle forum agree that these rates are within the prevailing market rates. R.A. Smith Declaration ¶¶15; Kampmeier Declaration ¶¶ 13-14.

There are no court orders establishing Ms. Brooks' rate. However, the EAJA rate, adjusted for cost of living, is calculated by enhancing the base hourly rate of \$125 by the consumer price index for urban consumers for the year in which the fees were earned. *See Sorenson v. Mink*, 239 F.3d 1140, 1149 (9th Cir. 2001). Using that calculation, this Court calculates and posts online the adjusted EAJA rates.<sup>2</sup> The adjusted EAJA rate for the first year of Ms. Brooks' law practice - 2014 - which is the year all of her hours were incurred, was \$190.06. Because all of Ms. Brooks' hours were incurred in her first year of practice, Alliance requests compensation for Ms. Brooks at the adjusted 2014 EAJA rate without expertise

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<sup>2</sup>[https://www.ca9.uscourts.gov/content/view.php?pk\\_id=0000000039](https://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039)

enhancements.

Regarding Ms. Smith and Mr. Bechtold, however, there are “special factors” present in this case. 28 U.S.C. § 2412(d)(2)(A). To justify an enhancement on this basis, “[f]irst, the attorney must possess distinctive knowledge and skills developed through a practice specialty. Secondly, those distinctive skills must be needed in the litigation. Lastly, those skills must not be available elsewhere at the statutory rates.” *Love*, 924 F.2d at 1495. This Court has expressly recognized environmental law as a specialized practice area warranting fee enhancements under EAJA: “Environmental litigation is an identifiable practice specialty that requires distinctive knowledge.” *Love*, 924 F.2d at 1496.

Mr. Bechtold has distinctive knowledge and skills developed through a practice specializing in environmental law. He received an A.B. from Harvard College in 1984 with an academic concentration on biology, with a focus on ecology. He received an M.S. in Environmental Studies from the University of Montana in 1992. He received a J.D. with high honors from the University of Montana in 2000, and was admitted to the Montana State Bar on October 6, 2000. While in law school, he was an editor of the Public Land and Resources Law Review, and published a law review article on the listing of the bull trout under the Endangered Species Act. After graduation from law school, Mr. Bechtold clerked for the District of Montana for two years. Bechtold Declaration ¶¶ 2-3.

Mr. Bechtold specializes in the litigation of environmental matters. He has taught a graduate-level seminar on NFMA and NEPA at the University of Montana. He has been a guest lecturer on environmental topics at the University of Montana School of Law and the Vermont Law School, and has presented on environmental topics at Continuing Legal Education seminars. Bechtold Declaration ¶ 7. His case load includes dozens of lawsuits involving management of federal public land and wildlife, environmental remediation, citizen suits under the Clean Water Act, as well as suits brought under the citizen suit and cost recovery provisions of CERCLA and RCRA. Bechtold Declaration ¶ 8. Both the District of Montana and Appellate Commissioner have agreed that Mr. Bechtold's expertise qualifies him to receive an enhanced rate. *See e.g. Krueger*, 2014 WL 46498 \*5; *Hapner v. Tidwell*, 9th Cir. No. 09-35896, Docket Entry 60.

Ms. Smith also has distinctive knowledge and skills developed through a practice specializing in environmental law. She received a Masters of Science in Environmental Studies from the University of Montana in 2008. She received a J.D. with high honors, and a Certificate in Environmental and Natural Resources Law, when she graduated as Class Valedictorian from the University of Montana School of Law in 2008. She was admitted to the Montana State Bar on October 7, 2008. While in law school, she was an editor of the Public Land and Resources Law Review and published three law review articles on National Forest management.

R.K. Smith Declaration ¶¶ 1-3.

Ms. Smith's law practice emphasizes public interest environmental litigation, with a particular specialization in conservation issues related to land and wildlife management in Montana and Idaho. She has worked on dozens of cases involving federal environmental law. She has secured successful published rulings for clients in Montana, Idaho, and before this Court. She has also presented lectures on federal environmental law for the University of Montana School of Law, the Vermont Law School, and the University of Oregon School of Law. In 2018, Ms. Smith received the Kerry Rydberg Award for Excellence in Public Interest Environmental Lawyering. R.K. Smith Declaration ¶¶ 4-6. Both the District of Montana and Appellate Commissioner have agreed that Ms. Smith's expertise qualifies her to receive an enhanced rate. *See e.g. Krueger*, 2014 WL 46498 \*5; *Hapner v. Tidwell*, 9th Cir. No. 09-35896, Docket Entry 60.

Thus, Mr. Bechtold and Ms. Smith have distinctive knowledge and skill from their specialty practices in federal environmental law. These "distinctive skills [were] needed in the litigation." *Love*, 924 F.2d at 1495. This case was a challenge to a federal agency action that required knowledge of multiple federal environmental laws, as well as knowledge of federal court rules and procedures. Additionally, this case required knowledge, understanding, and review of complicated scientific documents including scientific studies related to wildlife biology and habitat

management. Thus, the attorneys' understanding and experience with federal environmental law and environmental sciences were necessary for the success of this case.

Finally, these distinctive skills were "not [] available elsewhere at the statutory rate." *Love*, 924 F.2d at 1495. The high-quality legal representation was not otherwise available elsewhere to Alliance at statutory rates and could not have been provided by local general practitioners. Garrity Declaration ¶¶ 4-7. The ultimate success in this case would not have happened without counsel's specialized knowledge, expertise, and skill in environmental law. Garrity Declaration ¶¶ 4-7.

**D. Alliance's requested hours are reasonable.**

The hours expended on this case were reasonable and necessary and not excessive. Bechtold Declaration ¶15; R.K. Smith Declaration ¶11; Bishop Declaration ¶18; Johnson Declaration ¶9; R.A. Smith Declaration ¶16. Regarding the number of hours reasonably expended, "[b]y and large, the court should defer to the winning lawyer's professional judgment as to how much time [s]he was required to spend on the case." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). Counsels' "[s]worn testimony that, in fact, it took the time claimed is evidence of considerable weight on the issue of the time required." *Perkins v. Mobile Housing Board*, 847 F.2d 735, 738 (11th Cir. 1988).

As the D.C. Circuit has explained, "[t]he key question is whether the work

was reasonably done in pursuit of the ultimate result. In other words, would a private attorney being paid by a client reasonably have engaged in similar time expenditures?” *Goos v. National Ass'n of Realtors*, 68 F.3d 1380, 1385-1386 (D.C. Cir. 1995); *see also Woods v. Graphics Communications*, 925 F.2d 1195, 1207 (9<sup>th</sup> Cir. 1991). This Court has stated that the courts need not and should not be asked to engage in an “hour by hour analysis of the fee request.” *Gates v. Deukmejian*, 987 F.2d 1392, 1399 (9<sup>th</sup> Cir. 1992). Similarly, the Supreme Court has stated that “EAJA – like other fee-shifting statutes – favors treating a case as an inclusive whole, rather than as atomized line items.” *Jean*, 496 U.S. at 161-62.

In order to determine whether the number of hours expended is reasonable, plaintiff’s counsel “should identify the general subject matter of his [or her] time expenditures.” *Hensley*, 461 U.S. at 437 n.12. In identifying the subject matter, counsel “is not required to record in great detail how each minute of [her] time was expended.” *Id.* Rather, the test is whether the hours were “reasonable.” *City of Riverside*, 477 U.S. at 570 n. 4. To deny compensation, “it must appear that the time claimed is obviously and convincingly excessive under the circumstances.” *Id.* “Normally [an award of attorneys fees] will encompass all hours reasonably expended on the litigation . . . .” *Hensley*, 461 U.S. at 435.

In successfully prosecuting this case, Alliance’s attorneys expended reasonable hours engaged in normal and justified tasks associated with careful,

conscientious prosecution of a lawsuit against an agency that vigorously defended its actions under an extensive administrative record. In compiling these totals, Alliance's attorneys carefully reviewed their contemporaneous time entries to ensure that no hours were excessive, redundant, or otherwise unnecessary. *See Hensley*, 461 U.S. at 433-34; R.K. Smith Declaration ¶¶9-11 and Attachment A; Bechtold Declaration ¶¶ 13-15 and Exhibit 1.

Finally, the Court should fully compensate Alliance for the time its attorneys spent on this fee petition.<sup>3</sup> The time spent by prevailing parties on their fee petitions is fully compensable under EAJA. *See Love v. Reilly*, 924 F.2d 1492, 1497 (9th Cir. 1991).

**E. Others costs and expenses should be awarded.**

Alliance seeks non-taxable costs on appeal, costs in the district court, and expert witness costs. Pursuant to this Court's Opinion, Alliance did not submit an appellate Bill of Costs and does not seek taxable costs on appeal. *See* Circuit Rule 39-1.1 and Form 10 (limiting Bill of Cost reimbursement to copies of briefs and excerpts of record). Instead, Alliance seeks a total of \$5,075.19 for non-taxable costs on appeal, costs in the district court, and expert witness expenses. R.K. Smith

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<sup>3</sup>Alliance's fee request is for hours incurred as of the date of the filing of this fee motion. Alliance reserves the right to request an award of additional attorneys' fees associated with additional time spent on this fee petition that may occur as the case proceeds.

Declaration ¶¶ 12-15 (\$1,982.69 in nontaxable costs on appeal and district court costs, and \$3,092.50 in expert witness fees); *see Grove v. Wells Fargo Financial*, 606 F.3d 577, 579-582 (9th Cir. 2010)(differentiating between taxable and non-taxable costs and holding “we repeatedly have allowed prevailing plaintiffs to recover non-taxable costs where statutes authorize attorney's fees awards to prevailing parties”); *Oregon Natural Resources Council Fund v. Goodman*, 2008 WL 4000442 at \*7 (D. Or. 2008)(compensating fee experts); 16 U.S.C. §1540 (g) and 24 U.S.C. §2412(d) (2)(A)(expressly allowing expert witness fees under ESA and EAJA).

### III. CONCLUSION

In conclusion, Alliance respectfully requests the following:

Rebecca K. Smith Attorney Fees	\$113,507.74
Timothy M Bechtold Attorney Fees	\$68,055.26
Talasi Brooks Attorney Fees	\$7,906.49
Non-taxable Costs/Expenses	\$1,982.69
Expert Witness Fees	\$3,092.50
GRAND TOTAL	\$194,544.68

Respectfully submitted this 21st Day of September, 2018.

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/s/ Rebecca K. Smith  
REBECCA K. SMITH  
Public Interest Defense Center, P.C.

TIMOTHY BECHTOLD  
Bechtold Law Firm, PLLC

Attorneys for Appellant

### CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Fed. R. App. P. 27(d) and Circuit Rule 27-1(1), the foregoing motion is proportionately spaced, has a typeface of 14 points or more and contains no more than 20 pages excluding the cover, table of contents, table of authorities, certificates of compliance and service, and signature blocks.

/s/ Rebecca K. Smith

Rebecca K. Smith

PUBLIC INTEREST DEFENSE CENTER, P.C.

Timothy M. Bechtold

BECHTOLD LAW FIRM, PLLC

Attorneys for Appellant

### CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2018, I electronically filed the foregoing document, including all attachments, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. All participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Rebecca K. Smith

Rebecca K. Smith

PUBLIC INTEREST DEFENSE CENTER, P.C.

Timothy M. Bechtold

BECHTOLD LAW FIRM, PLLC

Attorneys for Appellant

No. 16-35589

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ALLIANCE FOR THE WILD ROCKIES,  
Plaintiff-Appellant,

v.

CHRISTOPHER SAVAGE, et al.,  
Defendants-Appellees,

and

LINCOLN COUNTY, et al.,  
Intervenor-Defendants-Appellees

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

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DECLARATION OF TIMOTHY M. BECHTOLD

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REBECCA K. SMITH  
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Attorneys for Appellant

Pursuant to 28 U.S.C. § 1746, I, Timothy Bechtold, declare as follows:

1. I make this declaration in support of the petition for attorney fees and other expenses filed by Plaintiffs in this case. I am co-counsel on this case, and competent to make this Declaration.
2. I received an A.B. from Harvard College in 1984. My academic concentration was biology, with a focus on ecology. I received an M.S. in Environmental Studies from the University of Montana in 1992. My academic focus while in this master's program was public land use policy and law. My master's thesis was an analysis of timber management on the former Northern Pacific landgrant in Montana. I received a J.D. with high honors from the University of Montana in 2000, and was admitted to the Montana bar on October 6, 2000. While in law school, I was editor of the *Public Land and Resources Law Review*, and published a law review article on the listing of the bull trout under the Endangered Species Act.
3. After graduation from law school, I clerked for the Honorable Donald W. Molloy, then Chief Judge of the District of Montana, for two years. During the course of this clerkship I also had opportunity to assist Judge Molloy when he sat with the Ninth Circuit.
4. After my clerkship with Judge Molloy, I entered into private practice on September 1, 2002 with the law firm of Rossbach Brennan, PC, which became Rossbach Hart Bechtold, PC in November, 2003. In January, 2008 I left Rossbach Hart Bechtold, PC and formed a solo practice, Bechtold Law Firm, PLLC.
5. I was chairman of the Federal Practice Section of the Montana State Bar Association from 2004-2012, and was President of the Montana Chapter of the Federal Bar Association from 2010-2012. I was also a member of the Local Rules Committee for the District of Montana from 2001-2006. I have served on the Board of Directors of the Montana Trial Lawyers Association since 2010, and I am currently the immediate Past-President of the Board of the Montana Trial Lawyers Association. I am rated Martindale-Hubbard AV-Preeminent, I am a National Trial Lawyer Top 100 Trial Lawyer, and I am a Life Fellow of the American Bar Foundation.
6. I am admitted to practice in the State of Montana, the United States District Court for the District of Montana, the United States District Court for the

District of Colorado, and the Second, Third, Sixth, Ninth, Tenth, and District of Columbia Circuit Courts of Appeals. Additionally, I have appeared *pro hac vice* in district court litigation in Alaska, Oregon, Washington, California, Utah, Kentucky, Pennsylvania, and the District of Columbia.

7. I specialize primarily in the litigation of environmental matters. I have taught a graduate-level seminar on the National Forest Management Act and the National Environmental Policy Act at the University of Montana, I have been a guest lecturer on environmental topics at the University of Montana School of Law and the Vermont Law School, and I have presented on environmental topics at Continuing Legal Education seminars. My case load includes suits involving environmental restoration and remediation, management of federal public land and wildlife, land use, citizen suits under the Clean Water Act, as well as suits brought under the citizen suit and cost recovery provisions of CERCLA and RCRA.
8. Representative federal cases on which I have been actively involved as an attorney include *Montanans for Multiple Use v. Barbouletos*, 568 F.3d 225 (D.C. Cir. 2009) (representing defendant-intervenors in challenge to Forest Service authority to manage various aspects of the Flathead National Forest based on, *inter alia*, Organic Act and Multiple Use Sustained Yield Act ); *Cabinet Resources Group v. Asarco*, CV 02-209-M-DWM (D. Mont.)(a case alleging violations of RCRA and CERCLA, eventually settled in bankruptcy); *Friends of the Wild Swan v. US Forest Service*, CV 03-161-M-DWM (D. Mont.); *Swan View Coalition v. Barbouletos*, CV 03-112-M-DWM (D. Mont.), 348 Fed.Appx. 295 (9th Cir. 2009)(requiring the Forest Service to establish a standard when forest uses compete with grizzly bears); *Forest Service Employees for Environmental Ethics v. US Forest Service*, 397 F.Supp.2d 391 (D. Mont. 2005)(requiring Forest Service to comply with NEPA and ESA for aerial application of fire retardant); *Forest Service Employees for Environmental Ethics v. US Forest Service*, 530 F.Supp.2d 1126 (D.Mont. 2008)(contempt hearing appropriate for Forest Service's failure to comply with court order); *Forest Service Employees for Environmental Ethics v. US Forest Service*, 726 F.Supp.2d 1195 (D.Mont 2010)(Forest Service violated NEPA, NFMA, and ESA in preparing fire retardant EA); *Alliance for the Wild Rockies v. Bradford*, 720 F.Supp.2d 1193 (D.Mont 2010) (Kootenai National Forest violated NEPA, NFMA, and ESA in preparing three timber sale projects); *Alliance for the Wild Rockies v. Lyder*, 726 F.Supp.2d 1126 (D.Mont. 2010)(U.S. Fish & Wildlife Service critical habitat designation for lynx insufficient); *Alliance for the Wild*

*Rockies v. Krueger*, 950 F.Supp.2d 1172 (D.Mont. 2013)(federal agencies must conduct consultation for migratory species). *Swan View Coalition v. Weber*, 52 F.Supp.3d 1133 (D. Mont. 2014)(federal agency must conform to law on newly-acquired lands); *Alliance for the Wild Rockies v. USDA*, 772 F.3d 592 (9th Cir. 2014)(complaints may be amended to include ESA claims after 60-day notice runs); *WildEarth Guardians v. U.S. Department of the Interior*, 205 F.Supp.3d 1176 (D. Mont. 2016) (critical habitat designation for lynx insufficient); *Alliance for the Wild Rockies v. Marten*, 200 F.Supp.3d 1110 (D. Mont. 2016)(enjoining timber sale for irrigation ditch maintenance); *Wild Rockies v. Zinke*, 265 F.Supp.3d 1161 (D. Mont. 2017)(FWS not warranted finding for Cabiinet Yaak grizzly bears arbitrary and capricious); *Alliance for the Wild Rockies v. Marten*, 253 F.Supp.3d 1108 (D. Mont. 2017)(enjoining timber sale in critical habitat); *Alliance for the Wild Rockies v. Marten*, 2018 WL 2943251 (D. Mont. 2018)(vacatur proper upon voluntary remand); *Indigenous Environmental Network v. U.S. Department of State*, 2018 WL 3910838 (D. Mont. 2018)(Keystone XL pipeline requires additional NEPA analysis).

9. The area of federal environmental litigation is complex and specialized. It requires an understanding of the complexities of federal case law, statutes, and regulations.
10. Because environmental litigation is an area of my specialty, as well as the specialty of co-counsel Rebecca Smith, we were able to litigate this matter efficiently and effectively. Because I am in private practice and do not earn a salary from an organization, I carry a heavy caseload that requires me to allocate my time efficiently. In this case, we obtained a favorable result for our clients while expending very reasonable hours.
11. I am requesting to be compensated at an hourly rate of \$365 for hours expended in the district court in 2016, \$340 for hours in 2015, and \$315 for hours in 2014. These are reasonable rates for my level of skill and expertise. Moreover, these rates are based on the rates awarded me by for prior litigation work and reflect cost of living and expertise enhancements. The last court order setting a district court rate for me was *Alliance for Wild Rockies v. Krueger*, 2014 WL 46498 \*5 (D. Mont. 2014)(awarding \$290/hour for work performed in district court in 2013). My rates for work on the merits reflect a modest \$25 increase per year as approved by the Ninth Circuit Appellate Commissioner in *Pollinator Stewardship*.

12. I am requesting to be compensated at an hourly rate of \$500 for hours expended in the Ninth Circuit in 2016, \$525 for hours in 2017, and \$550 for hours in 2018. The last court order on a reasonable appellate fee rate for me in the Seattle, Washington appellate forum was issued by the Appellate Commissioner in 2012 and addresses fees incurred in 2009/2010. The Appellate Commissioner found that my reasonable appellate rate was \$350 for 2010. *Hapner v. Tidwell*, 9th Cir. 09-35896, Order of Appellate Commissioner, Docket Entry 60 (May 22, 2012). My rates for work on the merits reflect a modest \$25 increase per year as approved by the Ninth Circuit Appellate Commissioner in *Pollinator Stewardship*. Furthermore, in line with *Pollinator Stewardship*, I have requested only the adjusted EAJA rate of \$200.78 for my work on this fee petition.
13. I maintain detailed, contemporaneous daily records for each tenth of an hour of work time. These records are broken down by time expended and general purpose of the work. The daily records of my work accompany this declaration as Exhibit 1.
14. In reviewing the daily time records for work performed in connection with this case, I have exercised billing judgment and eliminated excess and duplicative entries.
15. In my opinion, the professional hours detailed in my daily records that I am submitting to the Court were reasonable and necessarily expended for the preparation and successful presentation of this case. In my opinion, these hours represent time that would properly be charged to a commercial client. As detailed in Exhibit 1, the total number of hours expended is 182.1. At the rates explained above, and as detailed in Exhibit 1, my total fee request at this time is for \$68,055.26.
16. My total costs for this matter are \$140.67 for postage and printing of the 60-day notice in this matter and postage for shipping paper copies of briefs to the court.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 20th day of September, 2018.

/s/Timothy M. Bechtold

# Exhibit 1

Date	Description	Rate	Time Billed	Amount billed
9/1/2014	call w client re East Res project, conf Talasi re ER	315	2.50	787.50
9/3/2014	conf w Talasi re ER	315	0.20	63.00
9/29/2014	conf w Talasi re ER	315	0.50	157.50
10/29/2014	review project documents, Talasi notes	315	7.00	2,205.00
10/30/2014	call w client re claims	315	0.80	252.00
11/24/2014	email from client re ROD, review ROD, project docs	315	5.50	1,732.50
11/25/2014	review project documents	315	8.10	2,551.50
12/2/2014	review projects documents, revise 60-day, send	315	6.30	1,984.50
12/8/2014	emails w clients	315	0.20	63.00
12/8/2014	review ER BA	315	5.70	1,795.50
12/10/2014	emails w clients re issues on ER	315	0.70	220.50
12/16/2014	emails w client re lynx; review scientific lit	315	8.20	2,583.00
1/2/2015	email re issues and claims w client, research issues	340	5.80	1,972.00
1/8/2015	email w client re 60 day	340	0.10	34.00
1/8/2015	calls w client re issues, litigation	340	1.50	510.00
1/8/2015	review project documents	340	5.20	1,768.00
1/9/2015	review project documents	340	6.90	2,346.00
1/10/2015	call w client re issues and claims, litigation	340	0.80	272.00
4/14/2015	conf w Rebecca re ER issues	340	0.50	170.00
5/7/2015	conf w Rebecca re claims	340	0.70	238.00
5/8/2015	conf w Rebecca re claims	340	0.50	170.00
5/11/2015	revise complaint	340	2.90	986.00
5/13/2015	PPTO	340	0.10	34.00
5/14/2015	issue and claim research, project documents	340	3.00	1,020.00
5/14/2015	issue and claim research, project documents	340	4.20	1,428.00
5/18/2015	John Tustin NOA	340	0.10	34.00
5/18/2015	scheduling order	340	0.20	68.00
5/18/2015	email w John Tustin	340	0.10	34.00
5/18/2015	FOIA response	340	0.10	34.00
5/20/2015	emails w John re implementation	340	0.20	68.00
6/18/2015	emails w client, Rebecca re ER	340	0.10	34.00
6/19/2015	John's CMP	340	0.20	68.00
6/22/2015	conf w Rebecca re schedule	340	0.40	136.00
6/22/2015	emails w John re CMP	340	0.10	34.00
6/30/2015	CMO	340	0.20	68.00
7/16/2015	emails w counsel, client re strategy	340	0.30	102.00
7/28/2015	email from John re stakeholders	340	0.10	34.00
8/10/2015	revise intervene brief	340	1.00	340.00
8/27/2015	AR notice	340	0.10	34.00
9/14/2015	review AR, conf Rebecca	340	2.20	748.00
9/15/2015	emails w John	340	0.10	34.00
9/18/2015	email w John re AR	340	0.10	34.00
9/21/2015	email re AR error	340	0.10	34.00
9/30/2015	conf w Rebecca re brief	340	0.30	102.00
10/7/2015	Revise SJ brief, SUF	340	6.00	2,040.00
10/8/2015	Revise SJ brief, SUF	340	7.60	2,584.00
11/20/2015	USA SJ	340	1.90	646.00
11/21/2015	USA SJ brief, SUF, SDF, review AR docs	340	6.60	2,244.00
11/22/2015	USA SJ brief, SUF, SDF, review AR docs	340	5.20	1,768.00
12/9/2015	conf w Rebecca re reply	340	0.30	102.00
12/10/2015	conf w Rebecca re reply	340	0.20	68.00
12/11/2015	conf w Rebecca re reply	340	1.10	374.00
12/14/2015	conf w Rebecca re reply	340	0.50	170.00
12/14/2015	revise reply brief	340	6.70	2,278.00

12/15/2015	disputed facts	340	1.80	612.00
1/12/2016	amicus order	365	0.10	36.50
1/21/2016	USA reply	365	0.80	292.00
1/25/2016	amicus brief	365	0.40	146.00
2/8/2016	USA amicus response	365	0.20	73.00
2/18/2016	hearing order	365	0.10	36.50
2/19/2016	call, emails w client	365	0.30	109.50
4/14/2016	conf w Rebecca re hearing	365	0.40	146.00
4/15/2016	conf w Rebecca re hearing	365	0.80	292.00
4/18/2016	cottonwood cert extended	365	0.20	73.00
4/19/2016	prep for hearing	365	0.70	255.50
4/19/2016	hearing	365	2.50	912.50
4/19/2016	debrief w client, counsel	365	0.50	182.50
5/3/2016	email from DOJ	365	0.10	36.50
5/5/2016	conf w Rebecca re implementation, call w client	365	0.40	146.00
5/6/2016	DOJ email	365	0.10	36.50
5/9/2016	DOJ emails, conf Rebecca, client	365	0.30	109.50
5/23/2016	email to DOJ	365	0.10	36.50
5/24/2016	email from DOJ	365	0.10	36.50
5/27/2016	email from DOJ, conf w Rebecca and client	365	0.20	73.00
6/27/2016	email to DOJ	365	0.10	36.50
6/28/2016	email from DOJ	365	0.10	36.50
7/5/2016	email from DOJ	365	0.10	36.50
7/5/2016	call to client	365	0.10	36.50
7/20/2016	SJ order	365	2.30	839.50
7/20/2016	conf w Rebecca , client re SJ	365	0.50	182.50
7/20/2016	NOA, revise stay brief	365	1.20	438.00
7/21/2016	USCA scheduling order	500	0.30	150.00
7/26/2016	mediation order	500	0.10	50.00
8/1/2016	email from DOJ re more time, conf w Rebecca	365	0.20	73.00
8/1/2016	more time motion	365	0.20	73.00
8/1/2016	more time order	365	0.10	36.50
8/9/2016	conf w Rebecca re 27-3 brief	500	0.60	300.00
8/10/2016	revise 27-3 brief	500	3.20	1,600.00
8/10/2016	USA response to stay	365	0.50	182.50
8/10/2016	DOJ NOA	500	0.10	50.00
8/11/2016	clerks order	500	0.10	50.00
8/11/2016	mediation order	500	0.10	50.00
8/22/2016	USA 27-3 brief	500	1.50	750.00
8/22/2016	revise 27-3 reply	500	1.10	550.00
8/23/2016	27-3 order	500	0.10	50.00
8/23/2016	call w client re order	500	0.10	50.00
8/23/2016	Tustin email re strike	365	0.10	36.50
8/24/2016	DOJ strike motion	365	0.50	182.50
8/31/2016	stay pending appeal order	365	0.30	109.50
8/31/2016	calls w client re status	365	0.30	109.50
8/31/2016	renewal	500	0.10	50.00
9/9/2016	DOJ response	500	0.10	50.00
9/13/2016	call w Rebecca, client re 27-3 order	500	0.30	150.00
9/13/2016	27-3 order	500	0.10	50.00
10/24/2016	order on oral argument	500	0.10	50.00
10/25/2016	Tamara emails, conf w Rebecca, call w client	500	0.50	250.00
10/26/2016	revise opening brief	500	6.20	3,100.00
10/26/2016	conf w Rebecca re opening brief	500	0.10	50.00
10/28/2016	conf w Rebecca re opening brief	500	0.50	250.00
10/28/2016	revise opening brief	500	0.90	450.00
11/18/2016	email from DOJ re more time	500	0.10	50.00
11/18/2016	DOJ more time motion	500	0.10	50.00

11/21/2016	call w client re status	500	0.70	350.00
11/28/2016	order on change injunction, call w client	500	0.60	300.00
11/28/2016	oral argument order	500	0.10	50.00
11/29/2016	conf w Rebecca re oral argument	500	0.20	100.00
12/9/2016	DOJ brief	500	2.20	1,100.00
12/9/2016	review SER	500	0.60	300.00
12/14/2016	minute entry	500	0.10	50.00
12/20/2016	conf w Rebecca re reply	500	0.20	100.00
12/21/2016	conf w Rebecca re reply, call w client	500	1.00	500.00
12/22/2016	review USA brief, ER, SER docs, revise brief	500	4.80	2,400.00
12/23/2016	DOJ more time motion	500	0.10	50.00
12/30/2016	minute entry re briefs	500	0.10	50.00
1/20/2017	DOJ judicial notice, strike, surreply	525	0.50	262.50
1/20/2017	conf w Rebecca re DOJ documents	525	0.50	262.50
1/23/2017	conf w Rebecca re DOJ documents	525	0.10	52.50
1/24/2017	revise strike response	525	1.80	945.00
2/3/2017	DOJ letter	525	0.50	262.50
2/6/2017	conf w Rebecca re DOJ letter, revise response	525	0.30	157.50
2/6/2017	oral argument prep w Rebecca	525	1.50	787.50
2/9/2017	observe oral argument	525	0.50	262.50
2/9/2017	debrief w Rebecca	525	0.60	315.00
2/23/2017	supp briefing order	525	0.20	105.00
3/9/2017	supp brief	525	0.30	157.50
3/9/2017	FER, supp brief of Ds	525	0.60	315.00
3/10/2017	minute order on supp briefs	525	0.10	52.50
3/10/2017	USA SER	525	0.30	157.50
3/10/2017	minute order	525	0.10	52.50
3/17/2017	minute order	525	0.10	52.50
3/22/2017	minute orders	525	0.10	52.50
5/26/2017	28j letter	525	0.20	105.00
5/30/2017	28j response, 28j letter	525	0.10	52.50
5/31/2017	28j response	525	0.10	52.50
6/9/2017	USA 28j	525	0.10	52.50
10/2/2017	call w Mike re status	525	0.30	157.50
12/21/2017	email from tamara re moot motion	525	0.10	52.50
12/22/2017	conf w Rebecca re moot motion	525	0.10	52.50
12/22/2017	moot motion	525	0.60	315.00
12/27/2017	response to moot motion	525	0.50	262.50
1/8/2018	Tamara email re more time	550	0.10	55.00
1/8/2018	DOJ more time motion	550	0.20	110.00
1/10/2018	more time order	550	0.10	55.00
1/26/2018	DOJ vacate reply	550	0.40	220.00
1/29/2018	emails w client re status, call w client	550	0.30	165.00
4/18/2018	DOJ 28j letter	550	0.60	330.00
4/18/2018	conf w Rebecca re 28j	550	0.50	275.00
4/18/2018	28j response	550	0.20	110.00
7/26/2018	order	550	0.70	385.00
7/26/2018	conf w Rebecca, emails and call w client	550	0.40	220.00
7/28/2018	call w client re order	550	0.30	165.00
7/31/2018	emails re status report, conf w Rebecca	550	0.20	110.00
7/31/2018	status report	550	0.10	55.00
8/23/2018	DOJ proposal	550	0.10	55.00
8/23/2018	conf w Rebecca re status	550	1.00	550.00
9/4/2018	fee dec	201	1.90	381.48
9/4/2018	revise fee brief	201	1.00	200.78
<b>For professional services rendered</b>			<b>182.10</b>	<b>68,055.26</b>

**Summary**

District Court 2014	315	45.70	14,395.50
District Court 2015	340	76.10	25,874.00
District Court 2016	365	14.90	5,438.50
Ninth Circuit 2016	500	27.10	13,550.00
Ninth Circuit 2017	525	10.20	5,355.00
Ninth Circuit 2018	550	5.20	2,860.00
Fee Petition	201	2.90	582.26
<b>TT</b>		<b>182.10</b>	<b>68,055.26</b>

<b>EXPENSES:</b>	Copies/Printing	48.53
	Postage	92.14
<b>Total Expenses</b>		<b>140.67</b>
<b>TOTAL FEES AND EXPENSES</b>		<b>68,195.93</b>

No. 16-35589

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ALLIANCE FOR THE WILD ROCKIES,  
Plaintiff-Appellant,

v.

CHRISTOPHER SAVAGE, et al.,  
Defendants-Appellees,

and

LINCOLN COUNTY, et al.,  
Intervenor-Defendants-Appellees

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

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DECLARATION OF MATTHEW BISHOP

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*Attorneys for Appellant*

I, Matthew K. Bishop, hereby state the following:

1. My name is Matthew Kellogg Bishop. I am a staff attorney with the Western Environmental Law Center's Northern Rockies office in Helena, Montana. I am also the director of the Western Environmental Law Center's Northern Rockies office. I have personal knowledge of all statements made in this declaration. I am submitting this declaration in support of Plaintiffs' motion for attorneys' fees, costs, and other expenses.
2. I obtained a B.A. in History from Whitman College in 1993 and received my J.D. from Vermont Law School in 1998. I chose to attend law school, and enroll in Vermont Law School's environmental law program in particular, for the sole purpose of studying and practicing public-interest environmental law. While attending law school, I took classes on administrative law, federal natural resource law, water law (both quantity and quality), environmental law, and pollution control law. I also participated in Vermont's environmental moot court competition, completed two independent research and writing projects on issues of natural resource law, and graduated in the top 25% of my class.
3. While attending law school, I interned for several organizations working exclusively on environmental law matters. From June, 1996 to August 1996, I worked for the Environmental Law Alliance Worldwide in Eugene, Oregon and spent my time researching environmental law issues for public interest environmental attorneys from around the world. I also assisted two public-interest environmental attorneys – one from Brazil and one from Panama – with legal research at the University of Oregon School of Law. In June, 1997 I worked for Trustees for Alaska in Anchorage, Alaska and completed various research and writing projects

- on environmental matters for litigating attorneys. From July, 1997 to August, 1997 I interned with American Rivers in Seattle, Washington. While at American Rivers, I worked on various river protection, dam removal, and Federal Energy Regulatory Commission relicensing issues.
4. After law school, I joined the Western Environmental Law Center's Southwest Office in Taos, New Mexico as a junior staff attorney in October, 1998. During this time, I worked exclusively on environmental matters including two cases defending the reintroduction of the Mexican wolf to its historic range in Arizona and New Mexico, litigation to protect water quality in the Upper Rio Grande watershed, public lands grazing issues in Arizona, and a number of Wild and Scenic Rivers Act compliance cases on National Forest lands in Arizona, New Mexico, and Colorado. I also worked on water issues in Nevada and lead efforts to conserve Canada lynx in the southern Rockies. I am now a staff attorney and director of the Western Environmental Law Center's Northern Rockies Office in my hometown of Helena, Montana where I continue to practice public-interest environmental law exclusively. My work is now focused primarily on wildlife issues, in particular Endangered Species Act compliance.
  5. Since joining the Western Environmental Law Center in 1998, I have represented clients in numerous environmental matters pursued under various federal and state environmental statutes, including the National Environmental Policy Act, National Forest Management Act, Clean Water Act, Endangered Species Act, Wild and Scenic Rivers Act, National Historic Preservation Act, Federal Land Policy Management Act, the Montana Water Use Act, Nevada water law, and the Administrative Procedures Act. These cases include the following:

*Center for Biological Diversity v. Jewell*, 15-cv-0019-JGZ (D. Ariz. April 2, 2018) (consolidated) (successful challenge to 10(j) rule and “nonessential” finding for Mexican wolves).

*WildEarth Guardians v. Suckow*, 17-cv-00891-WYD (D. Col. November 6, 2017) (successful settlement with APHIS-WS requiring changes to predator control and new NEPA analysis by date certain).

*Friends of the Wild Swan v. Vermillon*, No. 15-35832 (Ninth Cir. August 3, 2017) (successful defense of settlement agreement to protect lynx from trapping).

*The Clark Fork Coalition v. Tubbs*, Case No. 15-0746 (Montana July 25, 2017) (unsuccessful attempt to obtain attorneys’ fees and costs for successful challenge to DNRC ‘s exempt well loophole under the private attorney general doctrine).

*The Clark Fork Coalition v. Tubbs*, 2016 MT 229 (successful challenge to DNRC’s exempt well loophole that allowed large subdivisions to avoid water permitting).

*WildEarth Guardians v. U.S. Department of the Interior*, 14-cv-00270-DLC (D. Mont. 2016) (successful challenge to revised lynx critical habitat rule).

*Defenders of Wildlife v. Jewell*, 2016 WL 1363865 (D. Mont. 2016) (successful challenge to agency decision not to list wolverine as a threatened species).

*The New Mexico Off-Highway Vehicle Alliance v. Forest Service*, 645 Fed. Appx. 795 (10th Cir. 2016)(successful defense of travel plan for Santa Fe National Forest) (second chair).

*Friends of the Wild Swan v. Vermillon*, 13-CV-66-M-DLC (D. Mont. February 10, 2015)(successful settlement with Montana requiring changes to trapping regulations in lynx habitat)( Ninth Circuit appeal by intervenors pending).

*National Trust for Historic Preservation v. Suazo*, 2015 WL 1432632 (D. Ariz. 2015)(successful challenge to Sonoran Monument plan allowing target shooting).

*Friends of the Wild Swan v. Weber v. Christiansen*, 767 F.3d 936 (2014) (unsuccessful challenge to Spotted Bear and Solider Addition projects on South Fork of the Flathead).

*Friends of the Wild Swan v. Ashe*, 18 F.Supp.3d 1077 (D. Mont. 2014) (successful challenge to U.S. Fish and Wildlife Service's delay in preparing recovery plan for threatened lynx).

*The Pryors Coalition v. Weldon*, 551 Fed. Appx. 426 (9th Cir. 2014) (unsuccessful challenge to Forest Service's travel plan for Pryor Mountains).

*Montana Wilderness Association v. Connell*, 725 F.3d 988 (9th Cir. 2013) (successful challenge to BLM management plan for Missouri Breaks National Monument).

*The New Mexico Off-Highway Vehicle Alliance v. Forest Service*, 540 Fed. Appx. 877 (10th Cir. 2013) (successful appeal of district court order denying conservation groups intervention) (second chair).

*Helena Hunters & Anglers v. Maurier*, No. BDV-2012-868 (1st Judicial District, Montana, 2013)(successful challenge enjoining Montana from authorizing recreational trapping of wolverines).

*Western Watersheds Project v. Buchanan*, No. 11-cv-354J (D. Wy. 2012)(successful settlement directing Forest Service to

remove fencing and corral to protect path of the pronghorn migration corridor).

*Friends of the Wild Swan v. USFS*, 875 F. Supp. 2d 1199 (D. Mont. 2012)(successful challenge to authorization of timber sale in lynx critical habitat).

*Russell Country Sportsmen v. USFS and MWA*, 668 F. 3d 1037 (9th Cir. 2011)(successful defense of Forest Service's travel plan in Little Belt mountains).

*WildEarth Guardians v. Steve Guertin et al.*, 10-cv-1959-AP (D. Col. 2011)(successful settlement requiring rule to list lynx in New Mexico).

*Alliance for the Wild Rockies v. Cottrell*, 632 F. 3d 1127 (9th Cir. 2011)(successful challenge to salvage sale)(second chair).

*Amigos Bravos v. U.S. Department of Energy*, CV-08-137 (D. N.M. 2011)(successful settlement requiring cleanup of Los Alamos, new permit, and funds for clients).

*River Runners for Wilderness v. Martin*, 593 F. 3d 1064 (9th Cir. 2010)(unsuccessful challenge to management plan for Grand Canyon)(second chair).

*Great Basin Water Network v. State Engineer*, 243 P. 3d 912 (Nev. 2010)(successful challenge large appropriation of water for Las Vegas)(co-counsel).

*Helena Hunters & Anglers v. Tidwell*, 841 F. Supp. 2d 1129 (D. Mont. 2009) (successful challenge to authorization of biathlon project).

*Wildlands CPR v. Tidwell*, CV-09-75-M-DWM (D. Mont. 2009)(successful settlement directing analysis).

*NICAN v. U.S. Department of Transportation*, 545 F. 3d 1147 (9th Cir. 2008) (mixed result in challenge to highway project).

*WildEarth Guardians v. Hall*, 08-cv-00676 - RMU (D.D.C. 2008) (successful settlement directing 12-month finding on lynx).

*Center for Native Ecosystems v. Wildlife Services*, No. 03-1152 (D. N.M. 2008)(mixed result via stipulated settlement agreement)

*Forest Guardians v. Forsgren*, 478 F. 3d 1149 (10th Cir. 2007) (unsuccessful challenge to Forest Service's failure to consult on how forest plans impact lynx).

*Center for Biological Diversity v. Norton*, CV-01-WM-435 (D. Col. 2005)(unsuccessful challenge dismissed on standing grounds).

*Coalition of Arizona et.al. v. U.S. Fish & Wildlife Service & Defenders of Wildlife*, CV-03-00508 (D. N.M. 2004) (successful defense of Mexican gray wolf reintroduction program).

*Arizona Wildlife Federation v. Golden*, CV-02-0997-PHX-RCB (D. Ariz. 2004) (successful settlement directing analysis and protection of seasonal wetlands).

*Amigos Bravos v. Greene*, CV-00-1615 (D.D.C. 2003) (unsuccessful challenge to EPA approval of voluntary implementation plan for TMDL).

*Center for Biological Diversity et. al., v. Veneman*, 335 F.3d 849 (9th Cir. 2003) (successful challenge directing consideration of 57 wild and scenic rivers), *amended opinion*, 394 F. 3d 1108 (settlement reached following remand).

*Amigos Bravos v. Norton*, CIV-01-1021-MV-JHG (D. N.M. 2002) (successful settlement requiring removal and reclamation of gravel mining operation on rim of the Rio Grande Gorge).

*Grand Canyon Trust v. FAA*, 290 F. 3d 339 (D.C. Cir. 2002)(successful challenge to agency decision to expand airport near Zion NP)(second chair).

*Center for Biological Diversity v. Andre*, CV-01-1106-WPJ (D. N.M. 2002) (unsuccessful challenge to timber sale, no appeal as sale was cancelled).

*American Rivers, et.al. v. Towns*, CV-01-921-JAT (D. Ariz. 2001) (successful settlement directing plan for Verde Wild and Scenic River, clean up river area, and interim protection).

*Amigos Bravos v. EPA*, 236 F.3d 621 (10th Cir. 2001), *vacated on mootness grounds*, 2001 WL 267206 (March 19, 2001) (successful challenge, eventually results permit for discharges from waste rock).

*New Mexico Cattle Growers Assoc. et al. v. U.S. Fish and Wildlife Service, et al. and Defenders of Wildlife et al.*, Civ. No. 98-0367 (D.N.M. Oct. 28, 1999) (successful defense of Mexican wolf reintroduction program).

6. I am currently litigating and/or developing ten additional environmental law matters (all in federal court).
7. I am currently a member in good standing and admitted to practice in Montana, New Mexico, and Oregon (inactive status). I am also admitted to practice before the United States District Court for the Districts of Montana, Washington D.C. (pro hac vice), Arizona (pro hac vice), Colorado, and New Mexico, and admitted to practice before the United States Court of Appeals for the Ninth, Tenth, and

D.C. Circuits.

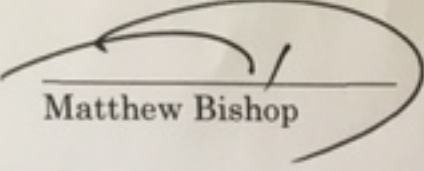
8. I have spoken at numerous seminars that qualify as Continuing Legal Education (CLE) for attorneys. I typically speak on at least one or two panels every year at the Public Interest Environmental Law Conference at the University of Oregon School of Law in Eugene, Oregon. I also spoke at the Seminar Group's Endangered Species Act conference in Seattle, Washington in 2015 and at the Seminar Group's Montana Water Law conference in Helena in 2010. I have also testified as a legal expert on the Clean Water Act at a State of New Mexico Water Quality Control Commission hearing.
9. Through my legal experience in law school and in my nearly twenty years of experience, I have personally prepared and litigated attorney fee applications in the federal courts. In litigating fee applications, I have become personally familiar with the common billing practices and procedures utilized by many law firms both in Montana and elsewhere. I have also conducted research in an effort to understand billing practices and procedures. I have also discussed billing practices with law firms. I have personally received fee awards for work in U.S. District Courts and U.S. Courts of Appeal.
10. As a result of litigating cases that arise under federal environmental statutes, I have become knowledgeable of the expertise required to prosecute such cases successfully and the availability of counsel in Montana and the Ninth Circuit who possess the special expertise in litigating such cases.
11. Based on my experience, environmental litigation in an identifiable practice specialty that requires distinctive knowledge of pertinent statutes, complex regulatory schemes, scientific principles, and industrial operations.

12. I am familiar with the issues raised in this case, and the skill and time it takes to successfully prosecute a case like this. Plaintiffs' success required the participation of counsel possessing special expertise in federal environmental law.
13. I am personally familiar with the expertise, experience, and reputations of Tim Bechtold and Rebecca Smith. They are both experienced litigators of cases arising under federal environmental law, and they are among a small class of specialists in this type of litigation.
14. The availability of attorneys in the District of Montana and the Ninth Circuit who possess sufficient skill and expertise in federal environmental litigation to prosecute competently a case such as this is limited.
15. The availability of such attorneys in the District of Montana and the Ninth Circuit who are willing to accept cases on behalf of environmental protection organizations is especially limited.
16. I understand that for the years in which this case was litigated, the EAJA statutory rate, adjusted for cost of living increases, in the Ninth Circuit was \$190.28 for work performed in 2015, \$192.68 for work performed in 2016, \$196.79 for work performed in 2017, and \$200.78 for work performed in the first half of 2018. Based on my knowledge of availability of competent counsel, no such counsel were available to Plaintiffs at those rates.
17. Competent counsel for this case and similar cases based on federal environmental laws must be drawn from among a small class of specialists who are available only at hourly rates that substantially exceed the capped rates ordinarily available under EAJA.
18. In my opinion, the number of hours expended on this case is eminently reasonable and not excessive.

19. Additionally, in my opinion, the rates requested are reasonable.
20. Furthermore, the rates requested by Mr. Bechtold and Ms. Smith for work on the merits reflect a modest \$25 increase per year as approved by the Ninth Circuit Appellate Commissioner in *Pollinator Stewardship*. The last court order setting a district court rate for Bechtold and Smith was *Alliance for Wild Rockies v. Krueger*, 2014 WL 46498 \*5 (D. Mont. 2014)(awarding \$230/hour for Smith for work performed in district court in 2013 and \$290/hour for Bechtold for work performed in district court in 2013). In line with this order, Bechtold's rate in 2014 was \$315, in 2015 was \$340, in 2016 was \$365, in 2017 was \$390, and in 2018 was \$415. In line with this order, Smith's rate in 2014 was \$255, in 2015 was \$280, in 2016 was \$305, in 2017 was \$330, and in 2018 was \$355. Furthermore, in line with *Pollinator Stewardship*, Bechtold and Smith have requested only the adjusted EAJA rate of \$200.78 for their work on this fee petition. Additionally, they only ask for the adjusted EAJA rate of \$190.06 for the work of first-year attorney Talasi Brooks for record review and complaint preparation in 2014. In my professional opinion, these are reasonable rates for lawyers with their levels of skill, expertise, and reputation in the community. My opinion pertains to district court rates in the District of Montana only and I do not state any opinion regarding appellate court rates in the Ninth Circuit.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 18th Day of September, 2018



Matthew Bishop

No. 16-35589

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ALLIANCE FOR THE WILD ROCKIES,  
Plaintiff-Appellant,

v.

CHRISTOPHER SAVAGE, et al.,  
Defendants-Appellees,

and

LINCOLN COUNTY, et al.,  
Intervenor-Defendants-Appellees

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

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DECLARATION OF MICHAEL GARRITY

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Attorneys for Appellant

I, Michael Garrity, declare as follows:

1. I make this declaration in support of Appellants' Motion for Attorney Fees and Other Expenses, and I make these statements based on personal knowledge. I am competent to testify to the matters stated herein.
2. I am the Executive Director of the Alliance for the Wild Rockies (Alliance). The Alliance is a 501(c)(3) tax-exempt organization incorporated in Montana. Now and at the time of filing of this civil action, the Alliance had a net worth of less than \$7,000,000 and had fewer than 500 employees.
3. I am familiar with public interest litigation. The Alliance has been a party to many successful lawsuits against public land management agencies.
4. There is a very limited pool of qualified Montana attorneys, as well as a very limited pool of attorneys that litigate cases in the Northwest, who are willing and experienced enough to undertake litigation against federal agencies such as the U.S. Forest Service and prevail.
5. We were very fortunate that Rebecca Smith and Tim Bechtold were available and willing to help us. They are both considered by the non-profit environmental community to be specialists with distinctive skills in environmental law. They have a reputation for solid, high-quality environmental plaintiffs' work, and their services are highly sought after. I often have to seek their services and "get in line" months or even years in

advance to ensure that they will be available to take on cases for our organization.

6. We could not have participated as a plaintiff in this case without their services; their expertise was necessary for successful resolution of this case.
7. Ms. Smith and Mr. Bechtold provided the Alliance with high-quality legal representation that was not otherwise available to us at statutory rates and could not have been provided by other attorneys.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th Day of September, 2018.

A handwritten signature in blue ink, reading "Michael Garrity", written over a horizontal line.

Michael Garrity  
Executive Director  
Alliance for the Wild Rockies

No. 16-35589

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

ALLIANCE FOR THE WILD ROCKIES,  
Plaintiff-Appellant,

v.

CHRISTOPHER SAVAGE, et al.,  
Defendants-Appellees,

and

LINCOLN COUNTY, et al.,  
Intervenor-Defendants-Appellees

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

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DECLARATION OF DANA JOHNSON

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Attorneys for Appellant

I, Dana M. Johnson, hereby declare the following:

1. I make this declaration in support of the petition for attorney fees and other expenses filed by Plaintiff-Appellant Alliance for the Wild Rockies (hereinafter “AWR”) in this case. I have reviewed the case docket reports, the parties’ briefing, the District Court orders, the Ninth Circuit order granting AWR’s renewed motion for an injunction pending appeal, the Ninth Circuit order granting in part and denying in part Appellees’ motion to modify the order for injunctive relief, and the Ninth Circuit opinions granting AWR’s motion for judicial notice, vacating the District Court’s Endangered Species Act Section 7 reconsultation ruling as moot, and reversing the District Court’s denial of AWR’s motion for summary judgment on its National Forest Management Act Motorized Vehicle Access Amendments claim. I have also reviewed the time and billing logs of AWR’s counsel. It is my opinion that the hours spent and rates sought by AWR are reasonable and proper.

2. I am an attorney licensed to practice in the State of Idaho (admitted in 2010), the United States District Court for the District of Idaho (admitted in 2010), the State of Montana (admitted in 2016), the United States District Court for the District of Montana (admitted in 2016), and the United States Court of Appeals for the Ninth Circuit (admitted in 2012). Prior to my

admission to the State Bar of Montana, I appeared *pro hac vice* before the United States District Court for the District of Montana on multiple occasions, and I have also appeared *pro hac vice* before the United States District Courts of Utah, Minnesota, and the Western District of Washington.

3. I received a B.A. with honors in writing from Boise State University, and I received a J.D. from the University of Idaho College of Law in 2009 with a course-load and upper division emphasis in environmental and wildlife law. I was admitted to the Idaho State Bar in 2010 and, while also working part-time as a staff attorney for Idaho Legal Aid Services, Inc. and as a public defender on the Nez Perce Reservation, I immediately established a public interest practice and caseload focusing on environmental litigation. While I enjoyed my public interest work with Idaho Legal Aid Services and with the Nez Perce Tribe, I transitioned into practicing, almost exclusively, environmental litigation. Currently, in addition to my private environmental law practice, I work as a staff attorney for Montana-based Wilderness Watch, Inc. with an emphasis on Wilderness Act, National Forest Management Act (“NFMA”), and National Environmental Policy Act (“NEPA”) litigation.

4. I have provided Continuing Legal Education trainings and other presentations on federal environmental law topics—including Endangered

Species Act (“ESA”), Wilderness Act, and general public interest practice topics—at University of Oregon’s Public Interest Environmental Law Conference as well as other venues in Idaho, and I provide ongoing educational support and trainings to regional environmental groups and student groups.

5. I specialize in environmental litigation. My current caseload includes environmental lawsuits involving management of federal public land and wildlife. I have successfully represented public interest environmental clients in several environmental law matters involving federal agency violations of the ESA, NEPA, NFMA, and the Wilderness Act. This representation includes the following federal cases: *Alliance for the Wild Rockies v. McNair*, No. 2:10-cv-504-EJL (D. Id. 2010) (lead counsel; project withdrawn by agency after Plaintiffs filed suit under the ESA, NEPA, and NFMA); *Native Ecosystems Council v. U.S. Forest Serv.*, 866 F. Supp. 2d 1209 (D. Id. 2012) (lead counsel; obtained order enjoining project and requiring the Forest Service and Fish and Wildlife Service to comply with the ESA and NEPA in forest-wide lynx habitat mapping and in project-level analysis); *Alliance for the Wild Rockies v. Krueger*, No. 9:12-cv-158-DLC-JCL (D. Mt. 2012) (lead counsel; project withdrawn by agency after Plaintiffs filed suit under NEPA); *Alliance for the Wild Rockies v. Krueger*,

950 F. Supp. 2d 1196 (D. Mont. 2013) (lead counsel; obtained order enjoining projects and requiring agencies to reinitiate consultation on the Northern Rockies Lynx Management Direction), *aff'd*, No. 14-35069 (9th Cir. 2016); *Friends of the Clearwater v. U.S. Forest Serv.*, No. 3:13-cv-515-EJL (D. Id. 2015) (local counsel; obtained order remanding Clearwater National Forest Travel Plan to agency based on violations of NFMA and the Travel Management Rule); *Wilderness Watch v. U.S. Forest Serv.*, No. 9:15-cv-28-DLC (D. Mt. 2015) (lead counsel; reached settlement with the Forest Service for full production of documents under the Freedom of Information Act regarding special use permit administration in the Emigrant Wilderness); *Wilderness Watch v. U.S. Bureau of Land Mgmt.*, No. 9:17-cv-28-DWM (D. Mt. 2017) (lead counsel, reached settlement with the Bureau of Land Management for full production of documents under the Freedom of Information Act regarding grazing allotment permitting in designated wilderness); *American Wild Horse Preservation Campaign v. Zinke*, No. 1:16-cv-1-EJL (D. Id. 2017) (local counsel, obtained order finding the Bureau of Land Management in violation of NEPA and the APA); *Wilderness Watch v. Vilsack*, 229 F. Supp. 3d 1170 (D. Id. 2017) (local counsel; obtained order finding the Forest Service in violation of NEPA and the Wilderness Act, finding the State of Idaho in violation of federal

permitting, and enjoining various activities), *appeal docketed*, No. 17-35878 (9th Cir. Oct. 27, 2017).

6. As a result of litigating cases that arise under federal environmental statutes, I know the level of expertise and time required to litigate such cases successfully, and I am familiar with rates charged by environmental attorneys. I have litigated fee requests, negotiated fee settlements, discussed fees with other environmental practitioners, provided and obtained expert fee declarations, and studied fee opinions and surveys.

7. I am familiar with the issues raised in this case and the specialized skill and time it takes to successfully prosecute a case like this. Based on my experience, environmental litigation is an identifiable practice specialty that requires distinctive knowledge of pertinent statutes, complex regulatory schemes, scientific principles, and industrial operations. AWR's success in this case required the participation of counsel possessing special expertise in federal environmental law, as well as counsel willing to litigate often highly politicized public lands litigation. AWR challenged agency action and inaction relating to the East Reservoir Project on the Kootenai National Forest in northwest Montana and the Northern Rockies Lynx Management Direction ("Lynx Amendment") alleging violations of federal environmental statutes. Through this challenge, AWR sought to enjoin, among other

things, over 8,845 acres of commercial logging, 5,775 acres of precommercial thinning, 4,257 acres of burning, 15 miles of new road construction and reopening of roads that had been previously restricted, and the reclassification of over 27 miles of roads from “decommissioned” to “existing.” AWR challenged these agency authorizations in an effort to protect important habitat for the Canada lynx and the highly imperiled Cabinet-Yaak grizzly bear, ESA-listed species sensitive to roads and logging, and to ensure compliance with federal environmental laws. Specialized knowledge of environmental statutes, regulations, recovery plans for these species, forest plans, and scientific studies was necessary to obtain such an injunction.

8. I am personally familiar with the expertise, experience, and reputations of Rebecca Smith and Tim Bechtold. They have exemplary reputations in the public interest environmental community and are regularly sought-out for their environmental litigation expertise. I have worked with Ms. Smith and Mr. Bechtold on multiple environmental cases. They are both experienced litigators of cases arising under federal environmental law, and they are among a small class of specialists in this type of litigation, and an even smaller class willing and qualified to litigate federal public lands issues in Montana. The availability of attorneys in the District of Montana

who possess sufficient expertise in federal environmental litigation to prosecute competently a case such as this, and who are willing to accept cases on behalf of environmental protection organizations, is especially limited. I know from personal experience that environmental protection organizations are often forced to seek counsel from out-of-state due to the limited availability of qualified counsel within Montana.

9. I have reviewed AWR's counsels' timesheets, updated as of September 10, 2018. In my professional opinion and experience, the number of hours expended on this case is reasonable, appropriate, and consistent with hours spent on similar matters by experienced practitioners in other cases. *See, e.g., ONDA v. Tidwell*, No. 07-1871-HA, 2013 WL 3348428, at \*5 (D. Or. July 2, 2013) (awarding full award for 359.4 hours spent on summary judgment phase alone); *see* Second Dec. of Suzanne Taylor, *ONDA v. Tidwell*, No. 07-1871 HA, ¶ 7 (d)-(f) (Dkt # 675) (calculating time spent on summary judgment alone); *Native Fish Society v. Nat'l Marine Fisheries Serv. [NMFS]*, No. 12-431-HA, 2014 WL 7331039, \*3 (D. Or. Dec. 19, 2014) (finding reasonable 259 hours for summary judgment briefing and 183 hours of fee petition briefing—104.6 hours to prepare a fee petition and supporting materials and 78.6 hours to prepare a reply brief and additional supporting materials); *see* Joint Dec. of David B.

Markowitz & Lawson E. Fite, *Native Fish Society v. NMFS*, No. 12-431-HA, at ¶ 20 (Dkt # 324); *Native Fish Society v. NMFS*, No. 12-431-HA, Opinion & Order (Dkt # 331); Second Dec. of David H. Becker, *Native Fish Society v. NMFS*, No. 12-431-HA, Ex. B at 39–42 (Dkt # 306); Third Dec. of David H. Becker, *Native Fish Society v. NMFS*, No. 12-431-HA, Ex. F at 1–6 (Dkt # 329); *Ctr. for Biol. Diversity v. Bureau of Land Mgmt.*, No. C 06–4884 SI, 2011 WL 6092453, at \*1–\*2 (N.D. Cal. Dec. 7, 2011) (finding reasonable 630 hours for summary judgment briefing and more than 500 hours for remedy briefing). AWR’s attorneys expended reasonable hours in this case engaged in normal and justified tasks—including full summary judgment briefing before the District Court and the Ninth Circuit, injunction briefing before the District Court and the Ninth Circuit as well as additional briefing to defend the awarded injunction, separate briefing to secure vacatur of the District Court’s reconsultation ruling, and supplemental briefing at the request of the Ninth Circuit—and AWR’s attorneys’ timesheets “list[] and identif[y] the general subject matter of [their] time expenditures” as required. *Fischer v. SJB P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000); *see also Hensley v. Eckerhart*, 461 U.S. 424, 437 n.12 (1983).

10. Further, I do not view Mr. Bechtold’s and Ms. Smith’s time entries as unnecessarily duplicative tasks. As a solo practitioner without the benefit of

large-firm resources, I am aware of how important it is to confer with other counsel and jointly review and edit briefing. In complex environmental litigation, having the input of another experienced attorney on substantive legal, factual, and strategic issues is necessary to locate and distill pertinent facts within a voluminous administrative record, identify difficult questions in the case that need to be answered, identify weak points that need to be bolstered, and ensure ultimate success in the case. Ms. Smith and Mr. Bechtold's time logs demonstrate conscientious and efficient effort in this regard.

11. In my professional opinion, AWR is entitled to a full fee award for all hours reasonably expended in this case. AWR advanced several related claims to achieve their ultimate goal—enjoining the East Reservoir Project and ensuring full compliance with procedural and substantive mandates of environmental statutes enacted to protect wildlife species and their habitat. AWR obtained excellent results, including a declaration from the Ninth Circuit that “[t]he Forest Service’s analysis was plainly insufficient,” remanding the challenged decision to the Forest Service to compel compliance with environmental laws, and vacatur of the District Court’s ruling regarding AWR’s lynx reconsultation claim because “[m]ootness was ... caused by the Federal Defendants who rendered the claim moot by

providing the relief requested by [AWR].” Accordingly, a full award for the time reasonably spent on all claims is appropriate in this case. *See Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983).

12. I am familiar with the common billing practices and procedures utilized by environmental lawyers in Montana and elsewhere. I understand that for the years in which this case was litigated, the EAJA statutory rate, adjusted for cost of living increases, in the Ninth Circuit was \$190.06 for work performed in 2014, \$190.28 for work performed in 2015, \$192.68 for work performed in 2016, \$196.79 for work performed in 2017, and \$200.78 for work performed in the first half of 2018. Based on my knowledge of availability of competent counsel, no such counsel were available to AWR at those rates.

13. In my professional opinion, the rates requested here are reasonable. The rates requested by Ms. Smith and Mr. Bechtold reflect a modest increase each year (reflecting both cost of living increases as well as additional expertise adjustment) above the rates set by the Ninth Circuit Appellate Commissioner for them in *Hapner v. Tidwell*, No. 09-35896 (9th Cir. May 22, 2012), ECF No. 60. For work completed in 2009 and 2010, the Commissioner awarded an appellate rate of \$225/hour to Smith for work performed in 2009/2010, and awarded an appellate rate of \$350/hour to

Bechtold for work performed in 2009/2010. The District of Montana has awarded similar rates for Mr. Bechtold and Ms. Smith. *See Native Ecosystems Council v. Weldon*, 921 F. Supp. 2d 1069, 1072 (D. Mont. 2013) (awarding \$220/hour for Smith for work performed in district court in 2012 and \$280/hour for Bechtold for work performed in district court 2012); *Alliance for Wild Rockies v. Krueger*, 2014 WL 46498 \*5 (D. Mont. 2014) (awarding \$230/hour for Smith for work performed in district court in 2013 and \$290/hour for Bechtold for work performed in district court in 2013).

14. Based on the foregoing, it is my opinion that Ms. Smith and Mr. Bechtold possess distinctive knowledge and skills in the practice specialty of environmental law, that Ms. Smith's and Mr. Bechtold's knowledge and skills were necessary to litigate this case successfully, and that attorneys with such distinctive skills were not available at the EAJA statutory rate. Accordingly, whether fees are awarded under the ESA or EAJA, the rates requested by Ms. Smith and Mr. Bechtold are reasonable and reflect rates previously awarded to these same attorneys for similar work in Montana and the U.S. Court of Appeals for the Ninth Circuit.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 10th day of September, 2018.

A handwritten signature in black ink, appearing to read 'Dana M. Johnson', written over a horizontal line.

Dana M. Johnson  
Law Office of Dana Johnson, PLLC  
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Moscow, ID 83843  
208-310-7003  
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No. 16-35589

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

ALLIANCE FOR THE WILD ROCKIES,  
Plaintiff-Appellant,

v.

CHRISTOPHER SAVAGE, et al.,  
Defendants-Appellees,

and

LINCOLN COUNTY, et al.,  
Intervenor-Defendants-Appellees

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

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DECLARATION OF PAUL KAMPMEIER

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Attorneys for Appellant

I, Paul Kampmeier, hereby state the following:

1. My name is Paul Kampmeier and I live on Vashon Island in Washington State. I have been licensed to practice law in the State of Washington since 2001. My Washington State Bar Association number is 31560.
2. I am employed by my law firm, Kampmeier & Knutsen PLLC, and I have my law office in downtown Seattle, Washington. I submit this declaration in support of Alliance for the Wild Rockies' fee petition in the above-captioned case. I make this declaration based on personal knowledge and I am competent to testify to the matters contained herein if necessary.
3. I received a Bachelor of Arts degree from the University of Michigan (Ann Arbor) in 1992 (with Honors) and received my Juris Doctor degree from the University of Washington School of Law in 2001 (with Honors, Order of the Coif). During law school I completed the Concentration in Environmental Law.
4. I have been licensed to practice law in the state courts of the State of Washington since 2001. I am also a member of the Supreme Court of the United States (admitted 2011); the U.S. Court of Appeals for the Ninth Circuit (admitted 2002); the U.S. District Court for the Eastern District of Washington (admitted 2002); and the U.S. District Court for the

Western District of Washington (admitted 2001). I am a member in good standing of each court to which I have been admitted.

5. Since admission to the bar in 2001 I have focused my legal practice on enforcing state and federal environmental laws in court. Because my clients often need assistance obtaining public records from federal agencies, I also represent them in Freedom of Information Act cases when requested. My current practice focuses on federal environmental litigation under the Endangered Species Act, the Clean Water Act, the Administrative Procedure Act, the Freedom of Information Act, and federal coastal zone laws.

6. I have often lectured on environmental litigation at the University of Washington School of Law and the Seattle University School of Law. I also have lectured at Lewis and Clark Law School in Portland, Oregon; Stanford Law School; Harvard Law School; and at Continuing Legal Education seminars in Oregon and Washington.

7. I have obtained or helped to obtain numerous published decisions for my clients. *See Olympic Forest Coal. v. Coast Seafoods Co.*, No. C16-5068RBL, 2016 U.S. Dist. LEXIS 72919 (W.D. Wash. June 3, 2016), affirmed *Olympic Forest Coal. v. Coast Seafoods Co.*, 884 F.3d 901 (9th Cir. 2018); *Nw. Env'tl. Advocates v. United States DOC*, 283 F. Supp. 3d

982 (W.D. Wash. 2017); *Nw. Env'tl. Advocates v. United States DOC*, No. C16-1866-JCC, 2017 U.S. Dist. LEXIS 185295 (W.D. Wash. Nov. 8, 2017); *Ctr. for Env'tl. Law & Policy v. United States Fish & Wildlife Serv.*, 228 F. Supp. 3d 1152 (E.D. Wash. 2017); *Klamath-Siskiyou Wildlands Ctr. v. Nat'l Oceanic & Atmospheric Admin.*, 99 F. Supp. 3d 1033 (N.D. Cal. 2015); *Klamath-Siskiyou Wildlands Ctr. v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv.*, 109 F. Supp. 3d 1238 (N.D. Cal. 2015); *Nw. Env'tl. Def. Ctr. v. Decker*, 728 F.3d 1085 (9th Cir. 2013); *Sierra Club v. Salazar*, 961 F. Supp. 2d 1172 (W.D. Wash. 2013); *Audubon Soc'y of Portland v. United States Nat. Res. Conservation Serv.*, 841 F. Supp. 2d 1182 (D. Or. 2012); *Carpenters Industrial Council v. Salazar*, 734 F.Supp.2d 126 (D.D.C. 2010); *Seattle Audubon Soc'y v. Sutherland*, No. CV06-1608MJP, 2007 U.S. Dist. LEXIS 31880 (W.D. Wash. May 2, 2007); *Seattle Audubon Soc'y v. Sutherland*, No. C06-1608MJP, 2007 U.S. Dist. LEXIS 55940 (W.D. Wash. Aug. 1, 2007); *Satsop Valley Homeowners Association v. Northwest Rock*, 126 Wash. App. 536, 108 P.3d 1247 (Div. II 2005); *Weber v. P&D Development*, 122 Wash. App. 1028 (Div. II 2004).

8. As a result of litigating cases that arise under federal environmental statutes, I have become knowledgeable of: (a) the expertise required to prosecute such cases successfully; (b) the availability of counsel

in the Pacific Northwest and the Ninth Circuit who possess the special expertise in litigating such cases; and (c) the prevailing market rates for counsel who possess such special expertise.

9. Based on my experience in practicing law, environmental litigation is an identifiable practice specialty that requires distinctive knowledge of pertinent statutes, complex regulatory schemes, case law, scientific principles, and industrial operations.

10. I have reviewed Plaintiff's-Appellant's October 28, 2016 Opening Brief; some of the other briefing presented to the court of appeals in this case; the Court of Appeals' July 26, 2018 order in this matter; and related orders issued in this case. It is evident to me that successful prosecution of this case absolutely required the participation of counsel possessing special expertise in federal environmental litigation.

11. The availability of attorneys in the Seattle area who have expertise in federal environmental law and are willing to accept cases on behalf of environmental protection organizations, rather than regulated entities, is very limited. Furthermore, the few attorneys in the Seattle area who have the requisite expertise tend to be very busy, so that environmental organizations looking for litigation counsel are often unable to litigate cases that they otherwise would, and for those cases that do go forward they are

often forced to hire attorneys from other locations.

12. Both in my capacity as a lawyer who routinely represents non-profit environmental organizations, and in my capacity as a past or present volunteer for organizations like the Washington Environmental Council, Puget Soundkeeper Alliance, and the Olympic Forest Coalition, I have regularly witnessed non-profit environmental organizations being unable to pursue cases they wish to pursue because they cannot find attorneys with the requisite expertise who also have time to take on the case. Similarly, in my past capacity as an attorney at the Washington Forest Law Center, where I worked for more than a decade, I often had to inform potential clients that I could not take their case because I did not have the time. Because of the unavailability of environmental attorneys in the Seattle area, I often refer these potential clients to lawyers in other cities.

13. I have reviewed draft declarations by Mr. Timothy Bechtold and Ms. Rebecca Smith, which are to be submitted in support of their petition for costs and attorneys fees, and which summarize their respective educations, experience, and expertise in environmental law and litigation. Based on my review of those declarations, and based on my experience litigating federal environmental cases in both U.S. District Courts and the U.S Court of Appeals for the Ninth Circuit, I am of the opinion that the

hourly rates of \$500 in 2016, \$525 in 2017, and \$550 in 2018 that the Alliance for the Wild Rockies seeks for the work of Timothy Bechtold, and the hourly rates of \$375 in 2016, \$400 in 2017, and \$425 in 2018 that the Alliance for the Wild Rockies seeks for the work of Rebecca Smith, are reasonable and within the prevailing market rates in the Seattle area for services at the circuit court level in litigation arising under federal environmental statutes for attorneys of equivalent specialized expertise and years of experience.

14. In addition to my experience litigating cases in district courts in Seattle and in the U.S. Court of Appeals for the Ninth Circuit, I reviewed a court order on reasonable appellate fee rates for Tim Bechtold and Rebecca Smith that the Appellate Commissioner issued in 2012 for attorneys' fees incurred by them in 2009-2010. *See Hapner v. Tidwell*, 9th Cir. 09-35896, Order of Appellate Commissioner, Docket Entry 60 (May 22, 2012). The hourly rates established by that order, and my opinion that an annual \$25 per hour increase in hourly rates is normal practice in Seattle and results in a reasonable hourly rate for federal environmental litigation, confirms and substantiates my opinion that the hourly rates for Mr. Bechtold and Ms. Smith identified in this declaration are reasonable and within the range of reasonable hourly rates charged in this forum for the kind of work

performed.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of September, 2018, at Vashon, Washington.



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Paul Kampmeier

No. 16-35589

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ALLIANCE FOR THE WILD ROCKIES,  
Plaintiff-Appellant,

v.

CHRISTOPHER SAVAGE, et al.,  
Defendants-Appellees,

and

LINCOLN COUNTY, et al.,  
Intervenor-Defendants-Appellees

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

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DECLARATION OF RICHARD A. SMITH

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Attorneys for Appellant

I, Richard A. Smith, hereby declare the following:

1. My name is Richard A. Smith. My current office address is Smith & Lowney, PLLC, 2317 E. John St., Seattle, WA 98112.
2. I am licensed to practice law in Washington, where I have practiced law for the past 25 years. My Washington State Bar Association number is 21788.
3. My practice includes litigation arising under federal environmental statutes, including the Clean Water Act (CWA); National Environmental Policy Act (NEPA); Administrative Procedures Act (APA); and the Clean Air Act (CAA). Over the past ten years, based on information provided to me by a newspaper reporter, I have been counsel of record in more cases deemed "environmental matters" in the Western District of Washington than any other single attorney. As a reflection of my expertise, I am frequently invited to speak at CLE conferences and have made presentations to annual meetings of the Washington Department of Ecology Water Quality Section on environmental law topics. I am routinely compensated at the rate of \$500/hr. and have received compensation at this rate in a settlement negotiated with the United States Department of Justice under environmental fee-shifting statutes.

4. As a result of litigating cases that arise under federal environmental statutes, I have become knowledgeable of (a) the expertise required to prosecute such cases successfully, (b) the availability of counsel in the Pacific Northwest and the Ninth Circuit who possess the special expertise in litigating such cases, and (c) the prevailing market rates for counsel who possess such special expertise.
5. Based on my experience in practicing law, environmental litigation is an identifiable practice specialty that requires distinctive knowledge of pertinent statutes, complex regulatory schemes, case law, scientific principles, and industrial operations.
6. During my practice of law, I have become familiar with the professional skills and reputation of Timothy Bechtold, and he is an experienced litigator of cases arising under federal environmental statutes, and he is among a small class of specialists in that type of litigation. In addition, I have reviewed the Declaration and briefing prepared by Timothy Bechtold for this matter.
7. I have also become familiar with the professional skills and reputation of Rebecca Smith, and she, too, is a talented litigator of cases arising under federal environmental statutes, and is among a small class of specialists in that type of litigation. I have reviewed the Declaration

and briefing prepared by Rebecca Smith for this matter.

8. I have read the briefing and decisions in this matter and have become familiar with the issues in this matter.
9. Successful prosecution of this case required the participation of counsel who possess the sort of special expertise in federal environmental litigation that Timothy Bechtold and Rebecca Smith have acquired.
10. The availability of attorneys in the District of Montana and the Ninth Circuit who possess sufficient expertise in federal environmental litigation to prosecute competently a case such as this is limited.
11. The availability of such attorneys in the District of Montana and the Ninth Circuit who are willing to accept cases on behalf of environmental protection organizations rather than regulated entities is especially limited.
12. I understand that for the years in which this case was litigated, the statutorily capped rates ordinarily available under the Equal Access to Justice Act ("EAJA"), after upward adjustment for cost of living increases, in the Ninth Circuit were \$190.28 for work performed in 2015, \$192.68 for work performed in 2016, \$196.79 for work performed in 2017, and \$200.78 for work performed in the first half of

2018.

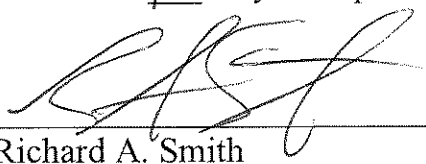
13. Based upon my knowledge of the market for legal services in the Seattle area and the Ninth Circuit, no attorney who possesses the requisite expertise to handle federal environmental litigation similar to this case was available to the Alliance for the Wild Rockies at the capped rates or less.
14. Competent counsel for this case and similar cases based on federal environmental laws must be drawn from among a small class of specialists who are available only at hourly rates that substantially exceed the capped rates ordinarily available under EAJA.
15. I have consulted with other experienced counsel in the Seattle area concerning the billing rates for attorneys with the specialized expertise of Timothy Bechtold and Rebecca Smith. Rates for experienced environmental litigators in the Seattle area currently fall mostly within the range of \$425 to \$625 per hour. The hourly rate of \$500 in 2016, \$525 in 2017, and \$550 in 2018 that the Alliance for the Wild Rockies claims for the work of Timothy Bechtold, and the hourly rate of \$375 in 2016, \$400 in 2017, and \$425 in 2018 for the work of Rebecca Smith at the circuit court level are within the prevailing market rates in the Seattle area for services in litigation arising under federal

environmental statutes for attorneys of equivalent specialized expertise and years of experience.

16. I have reviewed the time statements of Timothy Bechtold and Rebecca Smith in this matter, and the time they expended on the case was reasonable and not excessive.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 17<sup>th</sup> Day of September, 2018, at Seattle, Washington.

  
\_\_\_\_\_  
Richard A. Smith

No. 16-35589

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

ALLIANCE FOR THE WILD ROCKIES,  
Plaintiff-Appellant,

v.

CHRISTOPHER SAVAGE, et al.,  
Defendants-Appellees,

and

LINCOLN COUNTY, et al.,  
Intervenor-Defendants-Appellees

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

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DECLARATION OF REBECCA K. SMITH

---

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Attorneys for Appellant

I, Rebecca K. Smith, declare as follows:

1. I am an attorney licensed to practice law in state and federal courts in Montana and Idaho, as well as before the Ninth Circuit Court of Appeals. I have been a member of the State Bar of Montana since October 7, 2008. I was admitted to the State Bar of Idaho in April 2010.
2. I obtained my law degree in 2008 from the University of Montana School of Law in Missoula, Montana. I graduated with high honors as Class Valedictorian, and received a Certificate in Environmental and Natural Resources Law. While in law school I served two years, first as a staff member and then as an editor, on the Public Land & Resources Law Review and was a member of the National Moot Court team. In law school, I also published three law review articles on environmental policy issues.
3. In 2008, I also received my master's degree – Masters of Science in Environmental Studies – from the University of Montana Graduate School. My professional graduate portfolio focused on environmental issues in the Northern Rockies.
4. My law practice is primarily focused on public interest environmental litigation. I have worked on dozens of cases involving federal environmental law. I have secured successful rulings for my clients in numerous cases in Montana, Idaho, and before the Ninth Circuit. *See e.g. Alliance for the Wild Rockies v. Bradford,*

720 F.Supp.2d 1193 (D. Mont. 2010); *The Lands Council v. Cottrell*, 731 F.Supp.2d 1074 (D. Id. 2010); *Hapner v. Tidwell*, 621 F.3d 1239 (9th Cir. 2010); *Native Ecosystems Council v Weldon*, 848 F.Supp.2d 1207 (D. Mont. 2012); *Native Ecosystems Council v. Krueger*, 946 F.Supp.2d 1060 (D. Mont. 2013); *Alliance for the Wild Rockies v. Krueger*, 950 F.Supp.2d 1172 (D. Mont. 2013); *Swan View Coalition v. Weber*, 52 F.Supp.3d 1133 (D. Mont. 2014); *Native Ecosystems Council v. Krueger*, 63 F.Supp.3d 1246 (D. Mont. 2014); *Alliance for the Wild Rockies v. U.S. Dept. of Agriculture*, 772 F.3d 592 (9th Cir. 2014); *Alliance for the Wild Rockies v. Marten*, 200 F. Supp. 3d. 1110 (D. Mont. 2016); *Alliance for the Wild Rockies v. Christensen*, 663 Fed Appx 515 (9th Cir. 2016); *Alliance for the Wild Rockies v. Marten*, 2016 WL 6901264 (D. Mont. 2016); *Alliance for the Wild Rockies v. Zinke*, 265 F.Supp.3d 1161 (D. Mont. 2017); *Alliance for the Wild Rockies v. Marten*, 253 F.Supp.3d 1108 (D. Mont. 2017); *Alliance for the Wild Rockies v. Marten*, 2018 WL 2943251 (D. Mont. 2018); *Native Ecosystems Council v. Marten*, 2018 WL 3831339 (D. Mont. 2018).

5. I have presented lectures on federal environmental law for the University of Montana School of Law's Public Land and Resources Law Review Conference and Wildlife Law course, the Vermont Law School's Montana Field Study course, and the University of Oregon's Public Interest Environmental Law Conference.

6. In 2018, I received the Kerry Rydberg Award for Excellence in Public

Interest Environmental Lawyering from the University of Oregon School of Law - Public Interest Environmental Law Conference.

7. I am considered to be a specialist with distinctive skills in federal environmental law by the non-profit environmental community, and my services are highly sought after by that community.

8. In light of my distinctive knowledge and skill, and my reputation and expertise, my district court rates for work on the merits reflect a modest \$25 increase per year as approved by the Ninth Circuit Appellate Commissioner in *Pollinator Stewardship*. The last court order setting a district court rate for me was *Alliance for Wild Rockies v. Krueger*, 2014 WL 46498 \*5 (D. Mont.

2014)(awarding \$230/hour for work performed in district court in 2013). In line with this order, my district court rate in 2014 was \$255, in 2015 was \$280, in 2016 was \$305, in 2017 was \$330, and in 2018 was \$355. My appellate court rate for work on the merits also reflects a modest \$25 increase per year as approved by the Ninth Circuit Appellate Commissioner in *Pollinator Stewardship*. The last court order on a reasonable appellate fee rate for me in the Seattle, Washington appellate forum was issued by the Appellate Commissioner in 2012 and addresses fees incurred in 2009/2010. The Appellate Commissioner found that my reasonable appellate rate was \$225 for 2010. *Hapner v. Tidwell*, 9th Cir. 09-35896, Order of Appellate Commissioner, Docket Entry 60 (May 22, 2012). In line with this order,

and a reasonable annual increase, my rate in 2011 was \$250, in 2012 was \$275, in 2013 was \$300, in 2014 was \$325, in 2015 was \$350, in 2016 was \$375, in 2017 was \$400, and in 2018 was \$425. Furthermore, in line with *Pollinator Stewardship*, I have requested only the adjusted EAJA rate of \$200.78 for my work on this fee petition.

9. I maintain detailed, contemporaneous daily records for each tenth of an hour of work time. These records are broken down by time expended and general purpose of the work. The daily records of my work accompany this declaration as Attachment A.

10. In reviewing the daily time records for work performed in connection with this case, I have exercised billing judgment and eliminated categories of time spent on certain activities. My daily records do not include any unnecessary, redundant, or duplicative hours.

11. In my opinion, the professional hours detailed in my daily records that I am submitting to the Court were reasonable and necessarily expended for the preparation and successful presentation of this case. In my opinion, these hours represent time that would properly be charged to a commercial client. As detailed in Attachment A, and the table below, my total request for fees is for 335.3 hours, and my total fee request, at rates discussed above, is for \$113,507.74.

12. I have maintained records of costs and other expenses incurred in this matter.

In the exercise of billing judgment, Appellant does not request reimbursement for costs/other expenses related to Westlaw or PACER research or telephone costs.

Appellant also does not seek taxable costs on appeal that would have been submitted in a Ninth Circuit bill of costs. As detailed in Attachment B to this declaration (\$1,842.02) and Exhibit 1 to the Bechtold Declaration (\$140.67), Appellant's request for non-taxable costs and district court costs/other expenses is \$1,982.69.

13. Additionally, Appellant utilized the services of first-year attorney Talasi Brooks in this case. Ms. Brooks graduated from the University of Montana School of Law in 2013. After law school, Ms. Brooks clerked for Justice Michael E. Wheat at the Montana Supreme Court. After her clerkship, Appellant retained Ms. Brooks for this case. Shortly after she began work on this case in Fall 2014, she was hired by the public interest law firm Advocates for the West in Boise, Idaho. As an attorney in her first year of practice when she worked on this case, Brooks' requested rate is the 2014 adjusted EAJA rate of \$190.06. As set forth in Attachment C, Brooks expended 41.6 hours at a rate of \$190.06 for a total of \$7,906.49.

14. Finally, Appellant utilized the services of experts for this fee petition. The total fee for expert witnesses is \$3,092.50, as set forth below:

- a. Fee Expert Dana Johnson expended 4.7 hours at a rate of \$275/hour, for a

total fee of \$1,292.50;

b. Fee Expert Paul Kampmeier expended 2.6 hours at a rate of \$500/hour, for a total fee of \$1,300.00; and

c. Fee Expert Rick Smith expended 1 hour at a rate of \$500/hour, for a total fee of \$500.00.

15. The table below includes all fees and non-taxable-on-appeal costs:

	<b>RATE</b>	<b>HOURS</b>	<b>TOTAL</b>
<b>Rebecca K. Smith Attorney Fees</b>			
2015 District Court	\$280	137.6	\$38,528.00
2016 District Court	\$305	37.2	\$11,346.00
2016 Appellate Court	\$375	74	\$29,970.00
2017 Appellate Court	\$400	68.1	\$29,283.00
2018 Appellate Court	\$425	2.7	\$1,228.50
2018 Fee Petition	\$200.78	15.7	\$3,152.24
	<b>R.K. Smith Attorney Fees Total</b>	<b>335.3</b>	<b>\$113,507.74</b>
<b>Timothy Bechtold Attorney Fees</b>			
2014 District Court	\$315	45.7	\$14,395.50
2015 District Court	\$340	76.1	\$25,874.00
2016 District Court	\$365	14.9	\$5,438.50

2016 Appellate Court	\$500	27.1	\$13,550.00
2017 Appellate Court	\$525	10.2	\$5,355.00
2018 Appellate Court	\$550	5.2	\$2,860.00
2018 Fee Petition	\$200.78	2.9	\$582.26
	<b>T.M. Bechtold Attorney Fees Total</b>	<b>182.1</b>	<b>\$68,055.26</b>
<b>Talasi Brooks Attorney Fees</b>			
2014 District Court	\$190.06	41.6	\$7,906.49
	<b>Talasi Brooks Attorney Fees Total</b>	<b>41.6</b>	<b>\$7,906.49</b>
Dana Johnson Expert Fee	\$275.00	4.7	\$1,292.50
Paul Kampmeier Expert Fee	\$500.00	2.6	\$1,300.00
Richard A. Smith Expert Fee	\$500.00	1.0	\$500.00
	<b>Expert Fees Total</b>		<b>\$3,092.50</b>
Non-taxable Costs on Appeal, District Court Costs, and Other Expenses	<b>Total</b>		<b>\$1,982.69</b>
		<b>GRAND TOTAL</b>	<b>\$194,544.68</b>

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st Day of September, 2018.

/s/Rebecca K. Smith

Rebecca K. Smith

Attorney for Appellant

## ATTACHMENT A

Alliance for the Wild Rockies v Savage				
District Court No. CV-15-54-M-DLC				
9th Cir. No. 16-35589				
East Reservoir Project - Kootenai National Forest				
District Court Attorney Hours - Rebecca K Smith				
DATE	TASK	HOURS	RATE	
2.19.15	confer with client	0.1	280	
3.18.15	confer with client	0.2	280	
4.13.15	confer with client	0.1	280	
4.21.15	confer with client	0.1	280	
4.23.15	complaint	3.1	280	
4.24.15	complaint	4	280	
4.25.15	confer with client	0.1	280	
4.27.15	complaint	2.1	280	
4.28.15	complaint	4.7	280	
4.29.15	complaint	4.7	280	
4.30.15	complaint	4.3	280	
5.01.15	complaint	5.1	280	
5.04.15	complaint	2.9	280	
5.05.15	complaint	5.7	280	
5.06.15	complaint	3.2	280	
5.07.15	complaint	2.8	280	
5.08.15	complaint	6.7	280	
5.09.15	complaint	4.7	280	
5.11.15	complaint	1.9	280	
5.12.15	review ECF filing	0.2	280	
5.12.15	confer with client	0.1	280	
5.13.15	DOJ email	0.1	280	
5.13.15	confer with client	0.3	280	
5.14.15	confer with client	0.1	280	
5.15.15	confer with client	0.1	280	
5.18.15	review ECF filing	0.1	280	
5.18.15	DOJ email	0.1	280	
5.18.15	confer with client	0.1	280	
5.20.15	DOJ emails	0.1	280	
6.19.15	DOJ email	0.1	280	
6.22.15	DOJ email	0.1	280	
6.22.15	review ECF filing	0.1	280	
6.30.15	review ECF filing	0.1	280	
7.27.15	review answer	0.4	280	
7.28.15	DOJ email	0.1	280	
7.30.15	DOJ email	0.1	280	
8.27.15	review ECF filing	0.1	280	
9.08.15	summary judgment	4.7	280	
9.09.15	summary judgment	2.5	280	
9.10.15	summary judgment	2.4	280	
9.11.15	summary judgment	4.5	280	
9.15.15	summary judgment	2	280	
9.15.15	DOJ email	0.1	280	
9.17.15	summary judgment	4.1	280	
9.18.15	DOJ email	0.1	280	

9.21.15	summary judgment	5.5	280
9.21.15	DOJ email	0.1	280
9.22.15	summary judgment	4.2	280
9.23.15	summary judgment	2.6	280
9.24.15	summary judgment	4.5	280
9.25.15	summary judgment	5.4	280
9.30.15	summary judgment	0.8	280
10.06.15	summary judgment	0.5	280
10.07.15	confer with client	0.1	280
10.08.15	summary judgment	2.1	280
10.09.15	confer with client	0.1	280
11.19.15	skim ECF filings	0.4	280
11.19.15	DOJ email	0.1	280
11.19.15	confer with client	0.3	280
11.30.15	confer with client	0.1	280
12.03.15	sj reply	3.2	280
12.04.15	sj reply	4.3	280
12.09.15	sj reply	3.3	280
12.10.15	sj reply	3.1	280
12.11.15	sj reply	5.6	280
12.14.15	sj reply	3	280
12.14.15	sj reply - intervenor	2.2	280
12.15.15	sj reply	3	280
12.15.15	sj reply - intervenor	0.3	280
12.16.15	sj reply	2.6	280
12.17.15	sj reply	0.6	280
12.17.15	confer with client	0.2	280
12.18.15	confer with client	0.1	280
	<b>2015 TOTAL HOURS</b>	<b>137.6</b>	<b>38528</b>
1.11.16	confer with client	0.1	305
1.12.16	confer with client	0.1	305
1.14.16	ECF filing	0.1	305
2.18.16	ECF filing	0.1	305
2.19.16	confer with client	0.2	305
4.14.16	prep oral argument	4.1	305
4.15.16	prep oral argument	6.3	305
4.16.16	prep oral argument	1.5	305
4.17.16	prep oral argument	3.5	305
4.18.16	prep oral argument	7.6	305
4.19.16	prep oral argument	1.5	305
4.19.16	prep oral argument	2.5	305
5.03.16	DOJ email	0.1	305
5.05.16	email DOJ	0.1	305
5.06.16	DOJ emails	0.1	305
5.09.16	DOJ email	0.1	305
5.23.16	DOJ email	0.1	305
5.24.16	DOJ email	0.1	305
5.26.16	DOJ email	0.1	305
6.27.18	email DOJ	0.1	305
6.28.18	DOJ email	0.1	305
7.05.18	DOJ email	0.1	305
7.20.16	review order; notice of appeal; IPA motion	3.6	305
7.21.16	confer with client	0.2	305
7.21.16	review ECF filings	0.1	305

8.01.16	DOJ emails	0.1	305	
8.01.16	review ECF filings	0.1	305	
8.10.16	review ECF filing	0.1	305	
8.20.16	IPA reply	2.8	305	
8.22.16	IPA reply	0.8	305	
8.23.16	DOJ email	0.1	305	
8.24.16	review ECF filings	0.3	305	
8.31.16	review order	0.2	305	
8.31.16	confer co-counsel	0.1	305	
9.13.16	review ECF filing	0.1	305	
	<b>2016 TOTAL DISTRICT COURT HOURS</b>	<b>37.2</b>	<b>11346</b>	
<b>Appellate Court Attorney Hours - Rebecca K Smith</b>				
7.21.16	review ECF filing	0.3	405	
7.21.16	mediation questionnaire	0.4	405	
7.26.16	review ECF filing	0.1	405	
7.28.16	correspondence to mediator	0.1	405	
8.08.16	27-3 motion	5.3	405	
8.09.16	27-3 motion	2.7	405	
8.10.16	27-3 motion	1.4	405	
8.11.16	review ECF filings	0.1	405	
8.19.16	review ECF filing	0.3	405	
8.21.16	27-3 reply	5.3	405	
8.22.16	27-3 reply	0.9	405	
8.23.16	review ECF filing	0.1	405	
8.23.16	confer with client	0.1	405	
8.31.16	renew 27-3 motion	0.5	405	
9.09.16	review ECF filing	0.3	405	
9.13.16	review order	0.1	405	
9.13.16	confer with client	0.1	405	
10.13.16	opening brief	2.2	405	
10.14.16	opening brief	3.9	405	
10.17.16	opening brief	6.2	405	
10.19.16	opening brief	1.3	405	
10.20.16	opening brief	4.4	405	
10.21.16	opening brief	5.5	405	
10.24.16	opening brief	1.9	405	
10.25.16	DOJ emails	0.2	405	
10.25.16	review ECF filing	0.2	405	
10.25.16	confer with client	0.3	405	
10.26.16	motion to modify injunction response	2.5	405	
10.28.16	opening brief	3.7	405	
11.02.16	review ECF filing	0.2	405	
11.03.16	confer with client	0.2	405	
11.14.16	review ECF filing	0.1	405	
11.15.16	review ECF filing	0.1	405	
11.18.16	DOJ emails	0.1	405	
11.18.16	review ECF filing	0.1	405	
11.21.16	review ECF filing	0.1	405	
11.28.16	review ECF filing	0.4	405	
11.29.16	file ack of hearing notice	0.2	405	
12.19.16	reply brief	3.4	405	

12.08.16	review DOJ ECF filings	0.5	405	
12.09.16	review ECF filing	0.1	405	
12.12.16	review ECF filing	0.1	405	
12.14.16	review ECF filings	0.3	405	
12.15.16	review ECF filing	0.1	405	
12.15.16	confer with client	0.5	405	
12.20.16	reply brief	5.3	405	
12.21.16	reply brief	7.3	405	
12.22.16	reply brief/judicial notice motion	4.2	405	
12.27.16	confer with client	0.1	405	
12.28.16	review ECF filing	0.1	405	
12.30.16	review ECF filing	0.1	405	
	<b>2016 TOTAL APPELLATE HOURS</b>	<b>74</b>	<b>29970</b>	
1.20.17	review ECF filings from 6/19; confer counsel	2	430	
1.23.17	judicial notice reply; strike response	6.1	430	
1.24.17	strike response	1.2	430	
1.31.17	prepare oral argument	3.9	430	
2.01.17	prepare oral argument	2.6	430	
2.02.17	prepare oral argument	1.4	430	
2.03.17	prepare oral argument	3	430	
2.06.17	prepare oral argument	7.2	430	
2.07.17	prepare oral argument	4.9	430	
2.08.17	prepare oral argument	2.3	430	
2.08.17	travel to oral argument	5.3	430	
2.09.17	prepare oral argument	1.5	430	
2.09.17	oral argument	2.3	430	
2.10.17	travel from oral argument	5.5	430	
2.23.17	review ECF order	0.1	430	
3.06.17	supplemental brief	2.1	430	
3.07.17	supplemental brief	3.1	430	
3.08.17	supplemental brief	3.6	430	
3.09.17	supplemental brief	1.4	430	
3.10.17	review ECF filings	0.3	430	
3.16.17	review ECF filing	0.1	430	
3.17.17	review ECF filings	0.1	430	
3.20.17	review ECF filing	0.1	430	
3.22.17	review ECF filings	0.1	430	
5.26.17	review ECF filing	0.2	430	
5.30.17	28j response & 28J	2.5	430	
6.09.17	review ECF filing	0.1	430	
12.21.17	DOJ email	0.1	430	
12.22.17	DOJ email	0.1	430	
12.22.17	review ECF filing	0.2	430	
12.25.17	response to motion to dismiss	4.7	430	
	<b>2017 TOTAL APPELLATE HOURS</b>	<b>68.1</b>	<b>29283</b>	
1.08.18	DOJ emails	0.1	455	
1.10.18	review ECF filing	0.1	455	
1.26.18	review ECF filing	0.2	455	
4.17.18	review ECF filing	0.1	455	
4.18.18	28j response	1.2	455	
7.26.18	review order; confer client	1	455	
	<b>2018 TOTAL APPELLATE HOURS</b>	<b>2.7</b>	<b>1228.5</b>	

<b>Fee Petition - Attorney Hours</b>				
9.03.18	fee petition	4.1	200.78	
9.04.18	fee petition	5.3	200.78	
9.05.18	respond to fee expert	0.1	200.78	
9.10.18	respond to fee expert	0.1	200.78	
9.12.18	fee petition	0.2	200.78	
9.13.18	respond to fee expert	0.1	200.78	
9.14.18	respond to fee expert	0.1	200.78	
9.17.18	respond to fee expert	0.1	200.78	
9.20.18	fee petition	5.6	200.78	
	<b>RUNNING TOTAL - FEE PETITION</b>	<b>15.7</b>	<b>3152.24</b>	

## ATTACHMENT B

Alliance for the Wild Rockies v. Savage		
East Reservoir Project		
District Court No. CV-15-54-DLC		
9th Cir. No. 16-35589		
Costs		
Complaint Filing Fee	400	
Complaint Postage/Service	29.46	
Complaint Photocopies	18.6	
Appeal Filing Fee	505	
Oral Argument Airfare	176.2	
Oral Argument Hotel	607.27	
Oral Argument Airport Parking	24	
Oral Argument Lightrail	6	
Meal 2/08/17	42.1	
Meal 2/09/17	33.39	
<b>TOTAL NON-TAXABLE COSTS</b>	<b>1842.02</b>	

## ATTACHMENT C

Alliance for the Wild Rockies v Savage			
District Court No. CV-15-54-M-DLC			
9th Cir. No. 16-35589			
East Reservoir Project - Kootenai National Forest			
<b>District Court Attorney Hours - Talasi Brooks</b>			
DATE	TASK	HOURS	RATE
9.01.14	review project file/administrative record	2.1	190.06
9.02.14	review project file/administrative record	4.5	190.06
9.03.14	review project file/administrative record	1.3	190.06
9.04.14	review project file/administrative record	1.8	190.06
9.05.14	review project file/administrative record	2.2	190.06
9.06.14	review project file/administrative record	3.5	190.06
9.08.14	review project file/administrative record	4.2	190.06
9.09.14	review project file/administrative record	0.8	190.06
9.10.14	review project file/administrative record	0.6	190.06
9.11.14	review project file/administrative record	1.3	190.06
9.12.14	review project file/administrative record	3.6	190.06
9.15.14	review project file/administrative record	2.8	190.06
9.16.14	review project file/administrative record	2.2	190.06
9.17.14	review project file/administrative record	0.5	190.06
9.18.14	review project file/administrative record	2.6	190.06
9.19.14	review project file/administrative record	2.8	190.06
9.20.14	review project file/administrative record	2.9	190.06
9.23.14	review project file/administrative record	1.9	190.06
	<b>TOTAL</b>	<b>41.6</b>	<b>7906.49</b>